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TWENTY-FOURTH

Annual Report

OF THE

Railroad Commission

OF

Kentucky

FOR THE YEAR 1903

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RAILROAD COMMISSION.

C. C. McCHORD, Chairman,

JOHN C. WOOD. *J. F. DEMPSEY.*

MURRAY R. HUBBARD, Secretary.

RAILROAD COMMISSIONERS

OF

KENTUCKY.

HENRY D. McHENRY, August 2, 1878, Chairman.
LUCIUS DESHA, August 2, 1878.
W. H. PETTUS, August 2, 1878.
L. D. HOLLOWAY, August 2, 1878, Secretary.

J. FLETCHER JOHNSTON, Sept. 1, 1880, Chairman.
C. H. ROCHESTER, Sept. 1, 1880.
C. E. KINCAID, Sept. 1, 1880.
LANSING BURROWS, Sept. 1, 1880, Secretary.

D. HOWARD SMITH, 1882, Chairman.
WILLIS B. MACHEN, 1882.
WILLIAM M. BECKNER, 1882.
HENRY T. STANTON, 1882, Secretary.

J. P. THOMPSON, 1884, Chairman.
JOHN D. YOUNG, 1884.
A. R. BOONE, 1884. (Died January 27, 1886.)
I. A. SPAULDING, May, 1886. (Appointed to fill unexpired term of A. R. Boone, deceased.)
CLARENCE EGBERT, 1884, SECRETARY.

I. A. SPAULDING, May, 1888, Chairman.
W. B. FLEMING, May, 1888.
JOHN F. HAGER, May, 1888. (Resigned.)
GEORGE M. ADAMS, 1891. (Appointed to fill unexpired term of John F. Hager, resigned.)
WM. F. GRIFFITH, Secretary.

C. C. McCHORD, May 24, 1892, Chairman. (Resigned.)
UREY WOODSON, May 24, 1892.
CHARLES B. POYNTZ, May 24, 1892.
JAMES N. SAUNDERS. (Appointed to fill unexpired term of C. C. McChord, resigned.)
D. C. HARDIN, May 24, 1892, Secretary.

JOHN C. WOOD, December 10, 1895, Chairman.
H. S. IRWIN, December 10, 1895.
J. F. DEMPSEY, December 10, 1895.
S. D. BROWN, December 10, 1895, Secretary.

C. C. McCHORD, December 12, 1899, Chairman.
JOHN C. WOOD, December 12, 1899.
J. F. DEMPSEY, December 12, 1899.
MURRAY R. HUBBARD, February, 1900, Secretary.

TWENTY-FOURTH

ANNUAL REPORT

OF THE

RAILROAD COMMISSION.

OFFICE OF THE RAILROAD COMMISSION,
FRANKFORT, KY., Dec. 1, 1903.

To Hon. J. C. W. Beckham,
Governor of Kentucky.

As required by law, we hereby submit the twenty-fourth annual report of the Railroad Commission, and, in connection therewith, such statistics as we trust may prove to be valuable:

MILEAGE.

As shown in our last annual report on December 1, 1902, the mileage of railroads in operation, within the State of Kentucky and under the jurisdiction of the Commission, was 3,150. At the end of the last fiscal year, June 30, 1903, this mileage had increased 39 miles, making a total mileage, properly reported for assessment for purposes of taxation on that date of 3,189 miles. This, together with about 95 additional miles completed since June 30, 1903, is a gratifying increase and verifies the statement, in our last annual report, that large amounts of foreign capital were seeking investment in the State, and that during the year 1903 at least 100 miles of new road would be constructed. While the statistical table shows only 3,189 miles, this is merely the mileage subject to taxation on the 30th day of June, 1903. The 95 additional miles of railroad which have been completed but too late for assessment this year, are as follows:

The Chicago, St. Louis & New Orleans Railroad Company has

completed and is operating a railroad from Paducah to East Cairo, a distance of 31.93 miles, affording the people of western Kentucky a new and shorter route to St. Louis and other western cities.

The Tennessee Central Railroad Company has completed track laying into Hopkinsville and construction trains are now running over the tracks, placing ballast and making other improvements. The road will be opened for business during the next month, and will give to southern and western Kentucky a new and competing line to Nashville and other southern cities. It has about 14 miles of road within the State.

The Blue Grass Traction Company has completed and, for a month, has been operating its electric line from Paris to Lexington, a distance of 18 miles. The road is already well equipped, but its owners are not satisfied and are making improvements. The Licking River Railroad Company has added 5 miles to its line during the past year.

The Louisville & Atlantic Railroad Company has added 28.64 miles to its line, and the Louisville & Nashville Railroad has added 6.08 to the Middlesboro Railroad during the year.

The Chesapeake & Ohio Railway Company is actively constructing its line up the Big Sandy river, but the work is very heavy and it will probably not be in operation for more than a year.

With these new lines added, the Commission hopes to report next year a mileage in the State approximating 3,300 miles, and also beg leave to add that few States are showing more rapid increases in mileage, and certainly none of them affords a better field for development or a more sure return on the investment.

EARNINGS.

The close of the fiscal year for all railroad companies, June 30, again disclosed the fact that the year for them was more prosperous than ever before. In every case, except where there was an arbitrary change in handling business, their volume of business has been larger than ever before and their gross receipts have been proportionately greater. Last year the gross receipts of all com-

panies making reports of operation were $26,573,427, an average of $8,647 per mile of road; this year the amount has grown to $30,123,748, an average of $9,446 per mile of road. For 1902, the net receipts were $8,521,037, an average of $2,773 per mile; for 1903, this has increased to $9,694,363, an average of $3,039 per mile. For 1902 the total operating expenses were $18,052,390, an average per mile of $5,874; for 1903, total operating expenses are $20,429,385, an average of $6,406 per mile.

PHYSICAL CONDITION.

The reports to the Commission again show that large amounts have been expended for betterments. New and heavier rails have replaced old ones, new steel bridges have taken the place of old iron or wooden structures, old depots have been repaired and new ones erected, thousands of old ties have been replaced by new ones and additional rolling stock and motive power have been added as rapidly as orders for them could be filled. There have been complaints of congestion notwithstanding the efforts made to handle the business, but this condition was due to inability to handle promptly the tonnage offered. While conditions have somewhat improved in this regard, it can not be said that all the roads have kept pace with this enormous increase in traffic, and there have been many complaints on account of failure to furnish equipment.

ASSESSMENT.

Being limited in its powers of valuing railroad property to the assessment of tangible property only, the Commission has not seen fit to make a radical increase. Last year the total was $51,944,384, and this year the total is $52,253,266, an average value per mile of $16,385. This assessment is not the total valuation placed upon railroad property in Kentucky. The Railroad Commission values only the real or tangible property, while the Board of Valuation and Assessment goes further and ascertains the value of the franchise of each road. The taxes due to the State, upon the

assessment by the Railroad Commission for 1903, are $261,266.33, and the total taxes paid by the railroad companies during the year to the counties, municipalities and taxing districts on this assessment will approximate three times that amount or about $783,798.99.

A COMPARISON OF ASSESSMENTS OF RAILROAD PROPERTY.

1896	$47,294,998	1900	$52,184,787
1897	46,087,627	1901	52,432,428
1898	46,035,613	1902	51,944,384
1899	46,403,819	1903	52,253,766
Total	$185,822,057	Total	$208,815,365

CONSOLIDATION OF RAILROADS.

In our last annual report we published in full the petition filed by this Commission before the Interstate Commerce Commission seeking to prevent the merger or consolidation of the Louisville & Nashville Railroad Company with that of the Southern Railway and other railroads of the South. We also published in full answers of each of the railroads affected and shortly thereafter a meeting of the Interstate Commerce Commission was held in the city of New York for the purpose of hearing this complaint. A great many witnesses who were parties to the transaction were summoned and testified under oath, among the number were Messrs. J. Pierpont Morgan and John W. Gates the principal actors in that transaction. There were two meetings of the Interstate Commerce Commission and at each of these meetings the Commissioners were present in person and by counsel, Attorney General Clifton J. Pratt and special Counsel Col. Bennett H. Young and it is useless to say that the State was ably represented by these two distinguished attorneys and all the facts that were possible to be gathered were obtained at these meetings. The testimony of these witnesses were

taken in full and we deem the subject of such importance as to publish this entire testimony as a part of this report. It will be found in appendix "B." During the progress of this investigation the U. S. Circuit Court of Appeals handed down a decision in what is known as the Northern Securities case. It was sought by this Northern Securities Company which was controlled by the same parties or at least by many of the same parties who were endeavoring to engineer a similar deal as regards the Louisville and Nashville Railroad Company and other railroads of the South, in other words, it was shown at the New York hearing that these parties were contemplating the formation of the Southern Securities Company for the purpose of holding a majority of the stock of the Southern roads as contemplated by the Northern Securities Company. The U. S. Circuit Court of Appeals in a far reaching opinion held that no such plan could be legally carried out. In a recent interview given out by Mr. John Skelton Williams, President of the Seaboard Air Line Railway Company, who was a witness before the Interstate Commerce Commission in commenting upon this decision of the U. S. Circuit Court of Appeals, among other things said: "The decision seems to make impossible the success of the projected Southern Securities Company. It will be recollected that at the recent hearing before the Interstate Commerce Commission in the Louisville & Nashville case Mr. Gates testified that if the Northern Securities Company was upheld Mr. Morgan proposed the organization of a Southern Securities Company to merge certain important roads in the South, plans having been discussed or arranged to await the decision, which Mr. Morgan expected to be favorable to his methods. It could not have been a healthy or safe situation if a few men could have sat in their offices in New York and controlled the railroad systems of the entire country; not safe for the stockholders of the roads themselves, nor for the public."

"Speaking for the independent systems, I welcome the promise of continued fair competition. There is plenty of business to give fair profits to all roads and systems properly established and wisely managed, and there will be a demand for extension and for new lines to carry the rapidly increasing traffic and travel. As for the gen-

eral public, it is idle to talk of a political republic with a financial tyranny. There is no more safety in having commerce at the mercy of an absolute ruler than there is in having our government controlled by a czar who might be a benevolent or a cruel despot, a wise or a ruinous one, according to his whim or abilities or the circumstances.

"Instead of disturbing our prosperity, if sustained, this decision, as I believe it will be, will establish, secure and protect the commercial situation; it will encourage legitimate growth and expansion and stimulate enterprise and industry and local effort by guarding them against oppression and forced absorption."

Mr. Williams is regarded as one of the ablest and at the same time one of the most conservative railroad men of the country, and we believe that he voices the sentiment of all right thinking traffic men of the country. This Northern Securities case has been appealed to the Supreme Court of the United States where it has been recently argued and submitted and we confidently believe and trust that that court will affirm this decision; when that has been done then it will be impossible to consummate the plans regarding the merger or consolidation of the Louisville & Nashville Railroad with other railroads of the South. The Commission will watch this litigation closely and should we deem it necessary that further steps be taken an additional report will be made to you upon this subject.

COMPLAINTS.

As stated in our last annual report, it was the purpose of this Commission when it could find the time to do so to take up as a whole the tariffs of all the railroads in the State with the view of investigating and advising itself in regard to all rates upon all lines over the entire State. Some progress has been made in this direction but this work has been temporarily interrupted by a change in the personnel of the Commission, two of its old members having gone out of office and two new members having recently been inducted into office. During the year a large number of complaints have been investigated and much good work accomplished. The steps and

orders taken in these various complaints will be found in appendix "A," made a part of this report. In appendix "C" will be found the principal laws of Kentucky defining the duties and powers of the board; all of which is respectfully submitted.

C. C. McCHORD,
JOHN C. WOOD,
J. F. DEMPSEY,
Commissioners,

NEW RAILROAD COMPANIES INCORPORATED.

December 6, 1902.—The Tri-State Terminal Railway Company filed a copy of its charter, granted by the State of West Virginia, authorizing it to construct a railroad from Huntington, W. Va., through Boyd county, Ky., to Ironton, O.

December 8, 1902.—The Wolf Creek Railway Company filed a copy of its articles of incorporation, authorizing it to construct a railroad ten miles long up Wolf creek in Martin county.

January, 17, 1903.—The Louisville & Interurban Railroad Company filed a copy of its articles of incorporation, authorizing it to construct fifty-five miles of railroad in the counties of Jefferson, Oldham, Shelby, Spencer, Nelson and Bullitt. This company has now in operation a line of seven miles from Louisville to Jeffersontown and is actively at work on other lines. The company is in close touch with the Louisville Street Railway, and the construction and operation of its lines will be a great convenience to suburban residents near that city as well as a great developer of its contiguous territory.

January 21, 1903.—The Cincinnati, New Orleans and Texas Pacific Railway Company filed a copy of its charter, granted under the laws of the State of Ohio. This is the company operating the Cincinnati Southern Railway.

January 29, 1903.—The Louisville, Anchorage and Pewee Valley Electric Railway Company filed a copy of its amended articles of incorporation, changing its name to The Louisville and Eastern

Railroad Company, increasing the amount of its capital stock and authorizing it to extend its present line through Oldham, Shelby, Henry and Franklin counties to the city of Frankfort, with branches into Henry and Spencer counties.

February 16, 1903.—The Louisville and Mt. Washington Railway Company filed a copy of its amended articles of incorporation, changing its name to Louisville Suburban Railway Company and authorizing an increase in the amount of its Capital Stock and the mortgage it might incur.

February 23, 1903.—The Bluegrass Traction filed a copy of its amended articles of incorporation, authorizing an increase and limiting the amount of its capital stock and bonded indebtedness to $350,000 each, and authorizing it to construct a line of railroad from Lexington to Paris, a distance of eighteen miles. This road has been completed and trains have been running for the past month.

March 2, 1903—The Cumberland Valley Interurban Railroad Company filed a copy of its articles of incorporation authorizing it to construct a railroad from Burnside or Somerset in Pulaski county, to Monticello, Wayne county, a distance of twenty miles. This road would extend into the Wayne county field, which produces such high grade oil, and into a good agricultural country.

March 18, 1903.—The Kentucky Traction Company of Louisville filed a copy of its articles of incorporation authorizing it to construct an electric railroad from Louisville through Jefferson county to West Point, Hardin county, a distance of eighteen miles. This company was granted rights of way upon certain streets in Louisville without same having been advertised for sale, and a temporary injunction, restraining the company from constructing or operating a road thereupon, was granted, the action being based upon the contention that the proposed road was not a "trunk railway" and therefore not excepted from the provisions of sections 163-4, of the Constitution. Upon final hearing in the circuit court the injunction was dissolved and plaintiff appealed to the Court of Appeals, which tribunal has ordered the case advanced, and an early decision, which means much to interurban railroads, is expected.

June 15, 1903.—The Pennsylvania Terminal Railway Company filed a copy of its articles of incorporation, authorizing it to construct a railroad, wholly within Jefferson county, within and without the city limits of Louisville, estimated to be ten miles in length.

July 21, 1903.—The Burnside and Cincinnati Railway Company filed a copy of its articles of incorporation, authorizing it to construct a railroad in Pulaski county from Burnside Junction to Burnside Landing, a distance of one mile.

August 10, 1903.—The Louisa Railway Company filed a copy of its articles of incorporation, authorizing it to construct a railroad wholly within Lawrence county, four miles in length.

August 12, 1903.—The Madisonville Traction Company filed a copy of its articles of incorporation, authorizing it to construct a railroad from Madisonville to Earlington and White Plains, in Hopkins county, a distance of nineteen miles.

August 14, 1903.—The Licking River Railroad Company filed a copy of its amended articles of incorporation, increasing the amount of indebtedness the company may incur to $250,000.

August 17, 1903.—The Terminal and Warehouse Company of Louisville filed a copy of its articles of incorporation, authorizing it to construct and maintain terminal facilities in the city of Louisville.

October 26, 1903.—The Frankfort and Versailles Traction Company filed a copy of its articles of incorporation, authorizing it to construct a railroad from Frankfort to Versailles, a distance of fourteen miles, with branches and terminals in each of said cities. Active preparations for the construction of this road are under way.

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Appendix "A"

SYNOPSIS OF

COMPLAINTS,

ORDERS, STEPS AND RULINGS

OF THE

COMMISSION

FROM DECEMBER 1, 1902, TO DECEMBER 1, 1903.

Complaints and Steps.

E. R. Bassett, Complainant,

vs.

Illinois Central Railway Co., Defendant.

Subject: Extortionate rates on coal.—Complaint investigated and the following reductions made on coal per ton of 2,000 pounds, viz.: From all stations on main line east of Green river and in Owensboro district, to the following points:

	Old Rate.	New Rate.
To Goff's, Spring Lick, Caneyville, Millwood, Keyser's and Leitchfield	$0 80	$0 60
To Grayson Springs	1 00	70
To Big Clifty, East View, Stephensburg, Hansborough and Cecilia	1 20	80
To St. John	1 20	1 00

E. Kelley & Son, Complainants,

vs.

Illinois Central Railway Company, Ky.

Subject: Extortionate rates on coal.—Complaint investigated and rates reduced from all mines east of Green river and Owensboro district, as follows, viz.:

	Old Rate.	New Rate.
To Spring Lick	$0 80	$0 60

S. M. Bradley & Company, Complainants,

vs.

Chesapeake & Ohio, Lexington & Eastern, Louisville & Atlantic, and Ohio & Kentucky Railways, Defendants.

Subject: Extortionate rates on crossties.—This complaint was investigated, and after full hearing of the evidence and argument of counsel, the following reductions were made, from all stations on the Chesapeake & Ohio Railway, viz.:

	Old Rate.	New Rate.
To Huntington, Va., Ashland and Lexington, Ky.	$0 09	$0 07
To Cincinnati, O.	15	12
To Louisville, Ky.	11	09
To Pittsburg, Pa.	18	14½

The Bigstaff Cannel Coal Company, Complainants,

vs.

Chesapeake & Ohio, Louisville & Atlantic, Lexington & Eastern, and Ohio & Kentucky Railways, Defendants.

Subject: Extortionate rates on coal.—The complainants failed to appear, either in person or by counsel, at the time and place fixed for the investigation of this complaint; the Commission, however, made an investigation, and as a result the following reductions were made, per ton, from all stations on the Ohio & Kentucky Railway to all stations on Chesapeake & Ohio Railway, between and including Pine Grove and Ewington, as follows:

	Old Rate.	New Rate.
On bituminous and semi-cannel coal	$1 45	$1 25
On cannel coal	1 50	1 30
From Louisville & Atlantic stations to same points	1 45	1 20

J. V. Shipp, Complainant,

vs.

Louisville & Nashville Railroad Co., Defendant.

Subject: Extortionate rate on live stock, Midway to Latonia, Ky.—This complaint was investigated and a new tariff issued, reducing the rate to and from the points indicated, as follows:

Old Rate.	New Rate.
$0 41	$0 28

J. F. Lynch, Complainant,

vs.

Chesapeake & Ohio Railway Co., Defendant.

Subject: Extortionate rates on coal from points on Ohio & Kentucky Railway to Chilesburg.—Complaint investigated and the following reductions made per ton, viz.:

	Old Rate.	New Rate.
On cannel coal	$1 60	$1 30
On bituminous coal	1 45	1 20

T. C. Goodwin, Complainant,

vs.

Chesapeake & Ohio Railway Company, Defendant.

Subject: Extortionate rates on coal to Pine Grove, Ky.—This complaint was investigated and the following reductions made, per ton, on coal from all points on the Ohio & Kentucky Railway to Pine Grove, Ky.:

	Old Rate.	New Rate.
On cannel coal	$1 60	$1 30
On bituminous coal	1 45	1 20

W. P. Titus, Complainant,

vs.

Chesapeake & Ohio, The Lexington & Eastern, and the Louisville & Atlantic Railway Companies, Defendants.

Subject: Extortionate rates on coal from Louisville & Atlantic Railway points to all stations between and including Pine Grove and Ewington, Ky.—This complaint was investigated, and by agreement of parties the following reductions were made and approved by the Commission to and from said points, viz.:

Old Rate.	New Rate.
$2 00	$1 30

Citizens of Woodford County, Complainant,

vs.

The Southern Railway Company in Kentucky, Defendant.

Subject: Application for safety alarm signals at highway crossings.—This complaint and application was investigated and the attention of the proper officials of the Southern Railway Company in Kentucky was called to the necessity of protecting the two crossings just beyond the corporate limits of the city of Versailles, who very promptly ordered electrical alarm signals placed at each of said crossings, and an order for the necessary material has been made.

Thompson & Lake, Complainants,

vs.

Louisville & Nashville Railroad Co., Defendant.

Subject: Extortionate rate on tobacco.—Rate reduced and approved as follows: Unmanufactured tobacco in hogsheads, any

quantity, per 100 pounds, to Louisville, Ky., from the following points, viz.:

	Old Rate.	New Rate.
Springfield, Valley Hill, Booker, Croakes, Woodlawn, Greenbrier, Early Times.....	$0 20	$0 15

Citizens of Knox and Bell Counties, Complainants,

vs.

The Louisville & Nashville Railroad Co., Defendant.

Subject: Extortionate passenger rate of four cents per mile between all points on Cumberland Valley Division.—Pending the investigation of this complaint the Louisville & Nashville Railroad Company issued a new tariff, reducing its passenger rate to and from all stations upon its Cumberland Valley Division from four cents to three cents per mile, which rate and tariff is approved, and the complaint herein is dismissed, settled.

The Hopkinsville Commercial Club, Complainant,

vs.

The Illinois Central and Louisville & Nashville Railroad Companies, Defendants.

Subject: Extortionate rates on coal to Hopkinsville.—This complaint was partially investigated; before its completion complainant requested the Commission to suspend further action and permit it to take the matter up direct with the defendants. The request was granted, and new tariffs have since been issued, reducing rates to Hopkinsville, and nothing further has been heard from complainant.

H. D. Rodman and Others, Complainants,

vs.

Southern Railway in Kentucky, Defendant.

Subject: Insufficient depot accommodation, Joyce Station.—Complaint investigated; depot found to have been destroyed by fire; defendant notified to rebuild. Plans have been drawn and material ordered for same.

J. N. Shehan, Complainant,

vs.

Louisville & Nashville Railroad Co., Defendant.

Subject: Failure to maintain agency at Barker Station.—Investigation made; defendant requested to secure agent and maintain agency; request complied with and agency now maintained.

Curry Grocery Co., Complainant,

vs.

Louisville & Nashville Railroad Co., Defendant.

Subject: Discrimination in rates from Junction City to points on Kentucky Central Division.—Shortly after this complaint was filed, complainant's business house and contents were entirely destroyed by fire, and this complainant being the only shipper at Junction City affected by the rates complained of, and by their request this complaint is continued until such time as complainant may indicate.

Hatchell & Davis, Complainants,

vs.

Southern Railway in Kentucky, Defendant.

Subject: Extortionate rates on milling products from Jeffersontown to points south of Burgin, Ky., on Cincinnati, New Orleans & Texas Pacific Railway.—This complaint was investigated, and defendant agreed to refund excess of Louisville proper rate and to charge such rate on all future shipments of milling products to and from the points indicated.

Gentry & Kenny, Complainants,

vs.

Louisville & Nashville Railroad Co., Defendant.

This complaint alleged that defendant refused to furnish bill on transport cars of coal from mines upon the Knoxville Division of defendant's road consigned to shippers at Danville, Ky., Danville being a point upon the Cincinnati, New Orleans & Texas Pacific Railway, four miles north of Junction City. As a result of this refusal, dealers at Danville were compelled to consign cars to Shelby City and haul their coal by wagon to Danville, at great incon-

venience. While the Commission had no power to order the service, yet it felt that it was its duty, as has always been its policy, to intercede when the complaint is considered meritorious, even where it had no real authority. After several conferences with officials of the Louisville & Nashville and Cincinnati, New Orleans & Texas Pacific Railway Companies, the matter was amicably adjusted, the complainant, at the request of the Commission, agreeing to dismiss a civil action against the defendant growing out of the matter complained of, and the defendant ordered cars delivered to Danville and other shippers of coal upon the line of the Cincinnati, New Orleans & Texas Pacific Railway, thus giving the service desired.

M. Sabel & Son, Complainants,

vs.

Southern Railway in Kentucky, Cincinnati, New Orleans & Texas Pacific Railway, and Louisville & Nashville Railroad Co., Defendants.

Subject: Extortionate rates on wool.—This complaint was partially investigated. Complainant requested the Commission to permit them to take the questions involved up direct with the several railroads affected. The request was granted and the investigation continued.

Citizens of Burnside, Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway, Defendant.

Subject: Insufficient depot accommodations.—This complaint was investigated, and it appearing that the depot at Burnside was inadequate for the accommodation of the shipping and traveling public, the defendant was so notified, and the same was thereafter remodeled and enlarged.

J. M. Berry & Son, Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway, Defendant.

Subject: Overcharge on merchandise.—Complaint investigated, overcharge refunded and dismissed, settled.

J. M. Ringo and Others, Complainants,
vs.
Illinois Central Railway and Louisville & Nashville Railroad Co., Defendants.

Subject: Refusal to furnish transportation to live-stock shippers on consignment of stock to Louisville.—The Commercial Club of the City of Louisville joined with the Commission in this investigation. It was alleged that carriers entering Louisville north of the Ohio river provided such transportation, while those entering the city from the south refused. The investigation disclosed the fact that this practice had been abandoned by all railroads entering the city of Louisville. Complainants have since joined in a written communication to all roads entering Louisville, requesting that such transportation be allowed.

Alvin Karnes, Complainant,
vs.
Louisville & Nashville Railroad Co., Defendant.

Subject: Failure to furnish cars.—This complaint was investigated, and it developed that on account of the great volume of business and congested traffic, defendant had been unable to supply the necessary cars required by complainant for a number of days. Shortly thereafter the Commission was advised by complainant that cars were being promptly furnished, and he had no further complaint.

Commercial Club of Stanford, Complainant,
vs.
Louisville & Nashville Railroad Co., Defendant.

Subject: Application for electrical alarm signal.—Complaint investigated. Petition granted and signal erected.

J. C. Lewis, Complainant,
vs.
Cincinnati, New Orleans & Texas Pacific Railway, Defendant.

Subject: Extortionate rate on all freight to Burnside.—Complaint investigated and general reduction of three cents per hundred and new tariff issued.

George M. Smith, Complainant,

vs.

Cincinnati, New Orleans & Texas Pacific Railway, Defendant.

Subject: Extortionate demurrage charge on car of coal.—Complaint investigated and overcharge refunded.

Jones & Taylor, Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway, Defendant.

Subject: Refusal to bill freight at tariff rate and to deliver on order of consignor.—Complaint investigated, and freight now billed and properly delivered.

Great Western Coal and Coke Company, Complainant,

vs.

Louisville & Nashville Railroad Co., Defendant.

Subject: Failure to furnish coal cars and to transport cars of other companies when tendered.—Complaint investigated. Cars now furnished and transported and complaint withdrawn.

Pulliam & Houston, Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway Co., Defendant.

Subject: Claim for damage in shipment of printing press.—Complaint investigated and claim paid.

J. L. Grissom and Others, Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway Co., Defendant.

Subject: Failure to issue tariff reducing rates as per agreement.—Complaint investigated and tariff issued.

Grigsby & Co. and C. R. Barnes, Complainants,

vs.

Louisville & Nashville Railroad Company, Defendant.

Subject: Petition to have the depot yards at Bardstown macadamized.—Complaint investigated and entire yard macadamized.

Citizens of Bardstown Junction, Complainants,

vs.

Louisville & Nashville Railroad Company, Defendant.

Subject: Petition for new passenger station.—Complaint investigated and new depot constructed.

Howes & Howes, Complainants,

vs.

Chesapeake & Ohio Railroad Company, Defendant.

Subject: Failure to transport freight through connecting carrier from White House to Pikeville.—Complaint investigated, and freight now transported.

A. J. Cole, Lagrange, Ky., Complainant,

vs.

Louisville & Nashville Railroad Company, Defendant.

Subject: Extortionate rate on tomatoes, Lagrange to Sparta, Ky.—Complaint investigated and overcharge refunded.

B. F. Avery & Sons, Louisville, Ky., Complainants,

vs.

Baltimore & Ohio Southwestern Railway Company, Defendant.

Subject: Application for construction of bridge over alley in city of Louisville.—Application approved and bridge erected under restrictions contained in order.

Gano Kelly, Georgetown, Ky., Complainant,

vs.

Frankfort & Cincinnati Railroad Company, Defendant.

Subject: Extortionate rate on coal.—Complaint withdrawn.

Eaton, McClelan & Co., Complainants,

vs.

Louisville & Nashville Railroad Company, Defendant.

Subject: Refusal to accept freight and cars from connecting carrier.—Complaint investigated; freight and cars now accepted.

Jones & Taylor, Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway Co., Defendant.

Subject: Unauthorized delivery of freight at station other than point of destination.—Complaint investigated; dismissed settled.

Louisville Interurban Railway Company, Complainant,

vs.

Southern Railway in Kentucky, Defendant.

Subject: Application for grade crossing.—Complaint investigated; application refused. Under-grade crossing ordered at joint expense of complainant and defendant.

Atlantic & Pacific Oil Company and Others, Complainants,

vs.

Chesapeake & Ohio Railway Company, Louisville & Nashville Railroad Co., and Cincinnati, New Orleans & Texas Pacific Railway Company, Defendants.

Subject: Extortionate rate on crude oil to Louisville, Cincinnati and other points.—Complaint investigated, resulting in general reduction and new tariffs.

Estill County Oil Co., Complainant,

vs.

The Louisville & Atlantic, and Cincinnati, New Orleans & Texas Pacific Railways, Defendants.

Subject: Extortionate rates on crude oil, Irvine to Somerset, Ky.—After this complaint had been investigated, complainant notified the Commission that a satisfactory adjustment of the rate contended for had been made, and no further steps have been taken.

Bluegrass Traction Co., Complainant,

vs.

Southern Railway in Kentucky, Defendant.

Subject: Application for grade crossing at Paris, Ky.—Application approved after investigation, and grade crossing allowed under restrictions stated in order.

Thompson & Green, Complainants,

vs.

Louisville & Nashville Railroad Company, Defendant.

Subject: Overcharge on coal.—Complaint investigated, overcharge refunded and complaint dismissed, settled.

Louisville Board of Trade, Complainant,

vs.

Louisville & Nashville Railroad Company, Defendant.

Subject: Application for exoneration of Louisville shippers from provisions of long and short haul sections of Constitution and statutes, at 150 points, and objections thereto by shippers at intermediate points.—Upon the receipt of this application and petition and objection of shippers at intermediate points, the following notice was given defendant, viz.:

Springfield, Ky., November 9, 1903.

Mr. T. B. Harrison, Jr.,
District Attorney Louisville & Nashville Railroad Co.,
Louisville, Ky.

Dear Sir: Several weeks ago there was filed with the Railroad Commission, by the secretary of the Louisville Board of Trade, a complaint or petition in which it is alleged that the rates charged, collected and received by the Louisville & Nashville Railroad Company for the transportation of all commodities from Louisville, Ky., to the following points or stations in Kentucky, and on said company's lines, and from said stations to Louisville, Ky., have heretofore been advanced from 10 per cent. to 40 per cent. Said points or stations are enumerated in the paper hereto attached, marked "A", and the request is made by the Board of Trade that this Commission make full investigation of said matter, and that it exonerate said company from the provisions of the long and short haul sections of the Constitution and statutes, in so far as the city of Louisville and said designated points are concerned, and that said company be permitted to charge, collect and receive for the shipment of all commodities from and to said points from 10 per cent. to 40 per cent. lower rates of freight, or such other reduced rates as said company may deem proper, than those now charged by it for the transportation of all commodities.

Information has been received by this Commission that citizens

and shippers at various intermediate points other than those above referred to contend that such exoneration will work a hardship upon them and will be a discrimination, and that the rates now charged them by your company are extortionate, and in the investigation of the matters herein referred to, that just and reasonable rates should be made by this Commission for the transportation of commodities to and from all points on your company's lines.

I am therefore directed by the Commission to advise your company that a meeting will be held in the city of Louisville, at Seelbach's Hotel, on the 21st day of November, 1903, beginning at 11 o'clock a. m., for the purpose of investigating and determining all of said matters, and that this meeting will continue from day to day, subject to adjournment to the office of the Commission, at Frankfort, Ky., until all of said matters shall have been fully heard and determined.

Yours very truly,
C. C. M'CHORD, Chairman.

The evidence offered by the Louisville Board of Trade and defendant railroad company was heard, and then the representative of the Board of Trade asked permission to withdraw its complaint with the privilege of again filing it in a different form, which request was granted.

H. C. McFarlan, Complainant,
vs.
Louisville & Nashville Railroad Company, Defendant.

Subject: Insufficient depot accommodation at Beard Station, Ky.—Complaint investigated and depot remodeled.

J. H. Mitchell, Complainant,
vs.
Louisville & Nashville Railroad Company, Defendant.

Subject: Extortionate rate on sand.—Complaint investigated and error in tariff corrected and overcharge refunded.

J. H. McPherson, Complainant,

vs.

Cincinnati, New Orleans & Texas Pacific Railway Co., Defendant.

Subject: Extortionate rates on coal from Ohio and Kentucky Railroad points to Williamstown, Ky.—Complaint investigated and rate reduced to 40 cents per ton.

Citizens of Burnside, Ky., Complainants,

vs.

Cincinnati, New Orleans & Texas Pacific Railway Co., Defendant.

Subject: Petition for watchman or electric alarm signal at highway crossing, and complaint as to extortionate rates at Burnside, Ky.—Complaint investigated, alarm signal erected and new tariff, reducing rates, issued.

Many verbal complaints which do not appear herein have been adjusted, and other complaints are now pending and are being investigated.

The Commission has consumed much time and labor in investigating, in conjunction with the Interstate Commerce Commission, the subject of the attempted consolidation or merger of the Louisville & Nashville with the Southern Railway and other railroads in Kentucky. It is believed that these railroads will now not be able to perfect plans which had been determined upon to consolidate all of these vast interests, and that healthy competition between them will be maintained in the future.

The Bigstaff Cannel Coal Co., Complainant,

vs. [ORDER]

The Chesapeake & Ohio Railway, The Lexington & Eastern Railway, and The Louisville & Atlantic Railroad Companies, Defendants.

In the matter of the complaint of the Bigstaff Cannel Coal Co. and L. C. Norman & Sons, neither of said complainants appeared, either in person or by attorney, at the investigation. The Chesapeake & Ohio Railway Company was represented by John T. Shelby, attorney, and W. F. Hite, division freight agent. The Ohio & Kentucky Railroad Company, the Lexington & Eastern Railway

Company and the Louisville & Atlantic Railroad Company were represented by Chas. Scott, general freight and passenger agent of the Lexington & Eastern Railway Company. No evidence was offered or heard in regard to said complaints. Said representatives of said railroad companies agreed to reduce their rates upon coal and the rates in the future shall be as follows: On bituminous coal, from all stations on the Ohio & Kentucky Railroad via. the Lexington & Eastern and Chesapeake & Ohio Railways to all stations between and including Pine Grove and Ewington, on the Lexington Division of the Chesapeake & Ohio Railway, the rate should be $1.25 per ton; and on cannel coal from and to said stations the rate should be $1.30 per ton; and on bituminous coal from all stations on the Louisville & Atlantic Railroad via. the Lexington & Eastern and the Chesapeake & Ohio Railways to all stations between and including Ewington and Pine Grove, on the Lexington Division of the Chesapeake & Ohio Railway, $1.20 per ton. In the judgment of the Railroad Commission said rates are just and reasonable, and it is now ordered that the same be effective and be in full force and effect at the expiration of ten days after the date hereof. A copy of this order shall be entered and be an order upon the record book of the office of the Railroad Commission, and a copy thereof mailed to said parties this day, to-wit, December 4, 1902, all of which has been done. Each and all of said railway companies and said complainants were duly notified by registered letter, mailed to an officer of said railway companies and to said complainants more than ten days before this date, advising them of the time and place for hearing of said complaints and the nature thereof. Said investigation was held at Lexington, Ky., on the 2d and 3d days of December, 1902, the place and time fixed in said notice for said investigation, and then the Railroad Commission adjourned.

Hardinsburg and Rough Creek Tax District, Complainant,

vs. [ORDER]

The Louisville, Henderson & St. Louis Railway Co., Defendant.

The Railroad Commission met this day at its office for the purpose of hearing the motion of Mr. Geo. W. Jolly, attorney for the Hardinsburg and Rough Creek Taxing District, of Breckinridge county. That the Railroad Commission make an assessment of the property for the Louisville, Henderson & St. Louis Railway Co., in said taxing district, for the years 1898, 1899, 1900 and 1901. The

evidence before the Commission shows that an assessment of the property of said railway company was made for the years named, but through oversight or clerical error no apportionment of said property for said years to the said taxing district was certified by the Railroad Commission to the Auditor of Public Accounts. It is therefore ordered that an apportionment of the assessment of the property of the Louisville, Henderson & St. Louis Railway Co. in the Hardinsburg and Rough Creek Taxing District of Breckinridge county for the years 1898, 1899, 1900 and 1901 be now made, so far as the Railroad Commission has the power to do, and the same is now hereby certified to the Auditor of Public Accounts for purposes of taxation for the years aforesaid, as follows:

1898—Breckinridge County, Hardinsburg and Rough Creek Taxing District, 30.10 miles of railroad at $3,500 per mile, $105,350.00.

1899—Breckinridge County, Hardinsburg and Rough Creek Taxing District, 30.10 miles of railroad at $4,500 per mile, $135,450.00.

1900—Breckinridge County, Hardinsburg and Rough Creek Taxing District, 30.10 miles of railroad at $4,500 per mile, $135,450.00.

1901—Breckinridge County, Hardinsburg and Rough Creek Taxing District, 30.10 miles of railroad at $4,500 per mile, $135,450.00.

S. M. Bradley, Complainant,

vs. [ORDER]

Chesapeake & Ohio Railroad Company, Defendant.

S. M. Bradley, of Morehead, Ky., having heretofore, to-wit, on the 16th and 22d days of October, 1902, filed his written complaints with this Commission, alleging that the rates charged by the Chesapeake & Ohio Railway Company for the transportation of crossties from Morehead, Ky., to Lexington, Ashland, Winchester and other points on the Lexington Division of said company's road, are extortionate, and on the 20th day of November, 1902, written notice being given to W. F. Hite, division freight agent of said railroad company, notifying him, and through him said railroad company, of the nature of said complaints, and that a meeting of the Railroad Commission would be held at the Phoenix Hotel, in the city of Lexington, Ky., on the 2d day of December, 1902, at which time and place said complaints would be heard; and pursuant to said notice a meeting of said Commission was held at the time and place aforesaid, and all of the evidence offered by the parties relative to said complaints was heard and considered, and

the parties heard in person and by counsel, and said Commission then adjourned its meeting to its office, on this day and date, at Frankfort, Ky., for the purpose of determining said complaints; and it appearing to said Commission that complainant and said railroad company have agreed that the rate on crossties to Huntington, W. Va., Ashland, Ky., Winchester, Ky., and Lexington, Ky., from all stations on the Lexington Division of said railroad for the transportation of crossties shall be seven (7) cents per hundred pounds, and from said stations to Cincinnati, O., twelve (12) cents per hundred pounds, and from said stations to Louisville, Ky., nine (9) cents per hundred pounds, and from said stations to Pittsburg, Pa., fourteen and one-half (14½) cents per hundred pounds. In the judgment of said Railroad Commission said rates are just and reasonable, and said agreement is now ratified, approved and confirmed. It is therefore ordered, that said Chesapeake & Ohio Railway Company shall charge, collect and receive for the transportation of all crossties, from all stations upon its said Lexington Division in Kentucky, not exceeding the following rates, to-wit: To Ashland, Ky., Winchester, Ky., and Lexington, Ky., seven (7) cents per hundred pounds, and to Louisville, Ky., nine (9) cents per hundred pounds; and said railroad company is now requested by this Commission to issue its tariff, fixing its rate on all crossties from and to all points on its said line in Kentucky at not exceeding the rates above mentioned to all points in Kentucky, and to Pittsburg, Pa. Huntington, W. Va., and Cincinnati, O.

All other questions and matters not herein determined are continued, for such further determination as the Commission may deem proper; and said Commission reserves the right to modify, change or revoke this order, should it hereafter be deemed proper; and all papers and exhibits filed before said Commission at said Lexington meeting, together with the stenographic report of all evidence heard and steps there taken, are made part hereof. And it is ordered that a certified copy of this order be transmitted to said railroad company and to said complainant.

The Louisville & Interurban Railroad Company, Complainant,
vs. [ORDER]
The Southern Railway Company in Kentucky, Defendant.

The Louisville & Interurban Railroad Company heretofore made application to the Commission for its approval of crossings at

grade of the tracks of the Southern Railway Company in Kentucky at or near Jeffersontown and Prestonia. The Railroad Commission, having made inspection of the sites, heard the evidence offered by both parties and the argument of counsel, orders that the grade of the Louisville & Interurban Railroad Company and of the Southern Railway Company in Kentucky at said two points be separated, the method of separation to be left to agreement between the two companies. In case of failure of the parties to agree, the matter is reserved for future consideration of the Commission.

The Bluegrass Traction Company, Complainant,
vs. [ORDER]
The Frankfort & Cincinnati Railway Company, Defendant.

The Bluegrass Traction Company, having heretofore filed its written application to be permitted to cross the track of the Frankfort & Cincinnati Railway Company at grade, at a point on Main street, in Paris, Ky., and, after written notice to all parties in interest, the Commission having inspected the premises and made full investigation of said matter, it is ordered that said Bluegrass Traction Company shall, at its own expense, provide for the necessary special work and construct and maintain a standard crossing at said place; and this order, in permitting said crossing at grade, is made upon the further condition that every car of the Bluegrass Traction Company, in approaching said crossing, shall be brought to a full stop at least twenty feet and not more than fifty feet from the track of the Frankfort & Cincinnati Railway, and shall not proceed over said crossing until the conductor has preceded the car to the crossing and ascertained that the way is clear and safe, and said conductor shall remain at said crossing until said car has passed over same.

W. P. Titus, Complainant,
vs.
The Chesapeake & Ohio, The Lexington & Eastern, and The Louisville & Atlantic Railway Companies, Defendants.

In the matter of the complaint of W. P. Titus, heretofore filed before the Commission, a meeting was held this day at Lexington, Ky., at which meeting were present C. C. McChord and John C. Wood, commissioners; W. F. Hite, assistant general freight agent

of the Chesapeake & Ohio Railway Company; C. M. Browning, traffic manager of the Louisville & Atlantic Railroad Company; A. E. Richards, attorney for said company, and A. C. Hone, general manager of said company; C. H. Lemon, general freight agent, Chesapeake & Ohio Railway Company, and the complainant, W. P. Titus.

Said meeting having been called at the request and by agreement of the above-named parties, all of whom, for their respective companies, waived written notice of said meeting and hearing of said complaint. Said parties were heard and said complaint was investigated in part. Before the completion of said investigation, the said complainant, W. P. Titus, and said representatives of said railroad companies agreed, and the Commission was requested to approve said agreement in regard to said complaint. By the terms of said agreement said railroad companies and said complainant agreed that the rate on coal from all points on the Louisville & Atlantic Railroad via the Lexington & Eastern and Chesapeake & Ohio Railways to and including them, all points between Pine Grove and Ewington on the said Chesapeake & Ohio Railway, shall be fixed at $1.30 per ton, and the Commission having been requested to approve said agreement and said rate, the same is now accordingly done, and the total amount which said railroad companies may charge and receive for the transportation of coal from and to said points shall hereafter not exceed $1.30 per ton, unless changed or modified by further orders of the Commission.

It is further ordered that copies of this order, certified by the secretary of this Commission, shall be forwarded by registered mail to a representative of said railroads and to said complainant, and shall be in full force and effect at the expiration of ten days thereafter.

Appendix "B"

BEFORE THE INTERSTATE COMMERCE COMMISSION

*** ***

RAILROAD COMMISSION OF KENTUCKY

vs.

THE ATLANTIC COAST LINE CO., et al.

Hearing at New York, January 15th and 16th, 1903.

Present:

Commissioners Martin A. Knapp (Chairman), J. C. Clements, J. D. Yeomans, C. A Prouty and J. W. Fifer.

*** ***

J. J McAuliffe & J. H. Fishback,
Official Stenographers.

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BEFORE THE INTERSTATE COMMERCE COMMISSION.

The Chairman: Gentlemen, please give us your attention. The Commission has assigned this time and place to hear the complaint of the Railroad Commission of Kentucky against the Atlantic Coast Line Company and others. We will call the parties to the proceeding in order that appearances of counsel may be noted.

Appearances were noted as follows:

C. J. Pratt and Bennett H. Young, for the Railroad Commission of Kentucky.

Ed Baxter and W. G. Elliott, for the Atlantic Coast Line Company and the Atlantic Coast Line Railroad Company.

Ed Baxter and John D. Cadwallader, for the Louisville & Nashville Railroad Company.

Francis Lynde Stetson and Fairfax Harrison, for the Southern Railway Company, the Southern Railway in Kentucky and the Southern Railway in Indiana.

Francis Lynde Stetson, for the Cincinnati, New Orleans & Texas Pacific Railway Company.

J. M. Dickinson, for the Illinois Central Railroad Company.

G. W. Kretzinger, for the Chicago, Indianapolis & Louisville Railway Company.

The Chairman: Do counsel for complainants desire to make any preliminary statement?

Mr. Pratt: If it please the Commission, we have received information since the filing of this complaint which warrants us in asking that the complaint be dismissed against the Illinois Central Railroad Company. We wish to have an order of that kind made at this stage of the proceeding.

The Chairman: Counsel for complainant announces that in view of information received since the complaint was filed, it is desired to have the complaint dismissed as against the Illinois Central Railroad Company. Is there any objection?

Mr. Stetson: There is no objection.

The Chairman: The proceeding will be regarded as dismissed as against the Illinois Central Railroad Company.

Mr. Pratt: If it please the Commission, we have received this morning, or Mr. McChord, Chairman of the Kentucky Railroad Commission, has received, a telegram from Mr. Walker D. Hines, Vice-president of the Louisville & Nashville Railroad Company, informing us that two of the witnesses who have been summoned—for whom subpœnas were issued—are unable to be here. We desire to make that part of the record and beg leave to take their testimony in the future.

The Chairman: That may be done.

The telegram referred to follows:

Pensacola, Fla., January 14, 1903.

"C. C. McChord, Chairman Kentucky Railroad Commission, Fifth Avenue Hotel, New York.

On yesterday at Tallahassee I had a conference with T. M. Emerson of the Atlantic Coast Line and Traffic Manager Compton of our company. They both have made some weeks ago very important engagements to be in Florida the early part of next week, and all the other parties who were to meet them there will be on hand. A trip to New York just now will seriously inconvenience them and very much delay attention to important and urgent matters. They can not add upon the subject about general traffic matters, of which you desire to ask them, anything to what can be stated by other traffic officials familiar with the situation in the South, but if this testimony is needed, it can readily be furnished later by depositions or otherwise at such place as may suit your convenience. Will you not therefore release them from attendance upon the present meeting? Please answer at Louisville.

(Signed) WALKER D. HINES."

Mr. Pratt: If it pleases the Commission, we are not very familiar with the practice and procedure before the Commission. We have, in our complaint, stated the facts substantially as we claim to be able to show them.

The Chairman: Permit me to say that it will not be necessary, in making your preliminary statement to refer to the formal allegations in the complaint which describes the respondents and the sections in which they operate, but we would be glad to have you

make a statement of the facts which you desire to have investigated, or the more important facts which you expect to prove.

Mr. Pratt: The Kentucky Railroad Commission is a corporation created by the Constitution of Kentucky. It is given such powers as may be conferred upon it by statute. In pursuance of this constitutional provision, the Kentucky Railroad Commission has been given general control of railroads in Kentucky and special power to see that the laws relating to railroads are executed and enforced. Among other powers delegated is that of calling on the Attorney General of the State to assist them in the performance of their duties. The Constitution of Kentucky provides that it shall be unlawful for any railroad corporation operating any line through the State of Kentucky to consolidate or merge its capital stock or pool its stock with any other competing line of railroad.

Now, it has come to the knowledge of the Railroad Commission of Kentucky, and it has reasonable grounds to believe, that the Southern Railway, composed of a number of systems of roads, consolidated and acting under one managament, by some arrangement secured a majority of the capital stock of the Louisville & Nashville Railroad Company, and they have taken that stock and formed a voting trust. They have sold that stock to the Atlantic Coast Line Company, and that company has issued, or will issue, its bonds amounting to some $50,000,000, or to a certain number of millions of dollars, for the purpose of paying for that stock. The actual management of the Southern is intimately connected with the Coast Line Company and Coast Line Railroad Company. It will be our contention, and we will introduce proof to show, that the Louisville & Nashville Railroad, the Coast Line system of roads, known as the Atlantic Coast Line Railroad Company, the Coast Line Company, with the intervening trustee, operate in harmony, and have traffic arrangements for passengers and freight which result in defeating the constitutional provisions of Kentucky; the function of this Commission being to ascertain the facts, the object to be effected being in the State of Kentucky.

The Chairman: Do counsel for defendants, or either of them, desire to make any statement at this time?

Mr. Stetson: Representing the Southern Railway, I would state in response to the invitation of the court that in our opinion it will take very little time—unless counsel for complainants proceed outside of the issues—to demonstrate that there never was a wilder delusion on the part of any sane man than the claim by

counsel as stated. I do not doubt he believes it or he would not make it—and as stated in the complaint. There is absolutely no justification whatever for the charge. The statement of counsel indicates an utter contradictory state of mind, for at one moment he says that the property, the L. & N., is in the possession of the Southern Railway and a few minutes later states that it has been sold to the Atlantic Coast Line, which, he says, has paid $50,000,000 for it. These two statements are mutually contradictory. The latter statement is right; the property is in possession of the Atlantic Coast Line, with which the Southern Railway Company has no connection whatever. I ask why, in view of the statement of counsel should the Monon be here? Why should the Monon road be bought in? Why should not the period of repentance be continued by our friend and let out some of the other roads which have no connection whatever with the matter here, such as the Cincinnati, New Orleans & Texas Pacific and the Monon. I recognize the fact that the Louisville & Nashville, the Atlantic Coast Line and the Southern should be here, but there is nothing that should detain Mr. Kretzinger of the Monon who is sitting here. They should not stop with the Illinois Central in their repentance.

The Chairman: Is there any further statement to be made at this time?

Mr. Stetson: We are ready to throw this whole thing before the Commission. As a matter of fact we have grave doubts as to the jurisdiction of the Interstate Commerce Commission upon this subject, and grave doubts, even if it had jurisdiction, of the propriety of such an investigation. But throwing that aside, we invite the closest scrutiny of these matters, and as fast as the witnesses who have been subpoenaed are wanted, they will be produced, though in fact none of them has been legally subpoenaed.

Mr. Baxter: If it please the Commission, in filing the answer of the Louisville & Nashville Railroad Company I incorporated certain objections to the jurisdiction of the Commission, but I desire to withdraw those and as representing the Atlantic Coast Line and the Louisville & Nashville Railroad Company our position will be that the Atlantic Coast Line Railroad Company has acquired in a lawful manner a majority of the stock of the Louisville & Nashville Railroad Company; that those two companies are not competing railroad companies in the sense of the Constitution or the laws of Kentucky, and that the acquisition of the majority of the stock of the Louisville & Nashville Railroad Com-

pany by the Atlantic Coast Line Railroad Company is strictly legal.

The Chairman: We understand that Mr. Baxter, representing the companies stated, desires that any allegations in the answers of those companies denying the jurisdiction of this Commission in this proceeding shall be regarded as stricken out?

Mr. Baxter: Yes, sir.

Mr. Cadwallader: Perhaps I ought to state that there has been a large number of witnesses summoned, and that they are not all in court. Every one, however, who is accessible is prepared to come—every one, and they are prepared to state, as Mr. Stetson says, absolutely all they know about these transactions. The question of jurisdiction we propose to waive. We shall rely on the Commission to confine this inquiry somewhat to the facts which properly can come before it. We hope that as a very large number of people have been summoned, who are people of active affairs, they may not be compelled to come here until they are wanted. I am quite sure Col. Young and counsel will assist us in this matter of not subjecting those who have been called to unnecessary inconvenience.

Mr. Young: We are glad to give that assurance. They may come when they are wanted.

Mr. Elliott: If your Honors please, as far as the Atlantic Coast Line Company and the Atlantic Coast Line Railroad Company, two of the defendants, are concerned, for whom I appear together with Mr. Baxter, we desire to impress upon your minds the fact that in our answer we made no question of the jurisdiction of the Commission, and Judge Baxter's motion was that the question which he had raised in the answer of the Louisville & Nashville Railroad Company as to jurisdiction should be stricken out. We want the Commission to understand at the outset that so far as the Atlantic Coast Line is concerned, we have never had anything to conceal in regard to the transaction. We have done nothing illegal at all. We have not purchased this Louisville & Nashville Railroad stock under any agreement with the Southern Railway Company or any other company. It was a direct, out-and-out purchase on our part in the market. You will observe in our answer the fact that after denying the allegations of the complaint specifically, we lay before the Commission for the benefit of the complainants, and of the world, so far as that is concerned, facts not called for or demanded by any allegation in the complaint,

desiring that full information be given as to our contract and agreement to purchase the stock of the Louisville & Nashville Railroad, and with that object in view we lay before the Commission and complainants as an exhibit a copy of the proceedings of our board of directors confirming the action of the executive committee in making this purchase, and setting forth in detail how the purchase was made by the Atlantic Coast Line Railroad Company. We did that at the outset, and I make this statement now, with a view of impressing upon you that, so far as we are concerned, we invite the fullest investigation, and we are ready to throw open everything in our possession and everything within our knowledge as to the purchase of the Louisville & Nashville Railroad stock by the Atlantic Coast Line Railroad Company. We are glad to do this, and are ready to submit all we know for the benefit of complainants, the Commission and the public.

Mr. Kretzinger: On behalf of the Monon, it is sufficient to say that its verified answer tells its own story. It is a total stranger to all these transactions that are alleged to have occurred between these other companies. There has been no wrong-doing nor any illegal transactions on the part of any of the defendants in this case. The answer speaks for itself and it is unnecessary to go beyond it.

The Chairman: Is the complainant now ready to begin the examination of witnesses?

Mr. Pratt: Yes, sir.

The Chairman: Whom will you call first?

Mr. Pratt: Mr. Pierpont Morgan.

Mr. Stetson: I do not know that Mr. Morgan is at his office yet. He will be there this afternoon. I have produced Mr. Spencer. Mr. Morgan is not an officer of the Southern Railway. Mr. Spencer and Mr. Walters are here, and they are the parties we thought would be heard first. Mr. Morgan is not here, as we did not expect he would be called until later. He has not been legally subpoenaed anyhow.

Mr. Pratt: I thought you waived that.

Mr. Stetson: I say he has not been legally subpoenaed. A subpoena involves service with fees.

Mr. Pratt: Do you claim witness' fees?

Mr. Stetson: Of course Mr. Morgan does not want the fees; I state that to show that there was not a legal subpoena. We have tendered you the two principal witnesses. They are here and ready to testify.

Mr. Young: Of course we will do anything reasonable to oblige the gentlemen on the other side. We recognize the fact that these are gentlemen whose engagements should be considered if possible. We do not want to unnecessarily inconvenience anybody, though we had some reasons why we desired to examine Mr. Morgan first.

Mr. Stetson: I did not suppose when you subpoenaed forty gentlemen that you wished to have them all sitting around the court room for a spectacular effect. I supposed if you did, you would have done it in a legal manner. I have produced several witnesses, and I will produce Mr. Morgan this afternoon. If counsel for complainant do not want to begin until this afternoon, I am willing to wait. I do not want to dictate to anybody.

Commissioner Clements: What was the defect in the service?

Mr. Stetson: No fees were paid to the witness in connection with the subpoena. The compensation, I understand, is $1.50 a day.

Mr. Pratt: We will tender it.

Mr. Stetson: Of course the fees are not wanted. I am stating that as a reason for stating that the subpoenas were not legally served. We will produce the witnesses they want, and have tendered them two witnesses already.

Mr. Pratt: If Mr. Spencer is present, he may be examined now. However, we would like to have this fee question settled in advance. The return of the officer is *prima facie* evidence of the discharge of his duty. We would like to be advised, so we will know how to act in the future.

The Chairman: We have understood Mr. Stetson to say that all of the witnesses who have been subpoenaed will be produced, having reference to their reasonable convenience and that of the Commission, and at this stage of the proceeding it does not seem necessary for the Commission to make any ruling as to whether the witnesses were properly subpoenaed or not because fees were not tendered. We understand that the complainants are willing, rather than to postpone the examination of witnesses, to call those who are present upon the assurance of Mr. Stetson that Mr. Morgan will be produced directly after the recess. It is very properly suggested that in view of the very considerable number of witnesses and the statement of Mr. Stetson that they will be produced as their attendance is desired, that you might, so far as you can, indicate which witness not present now you desire to call next so

that counsel can arrange for their attendance when wanted. It appears that Mr. Spencer is here and that Mr. Walters is here and some other gentlemen who have been subpoenaed. Will you kindly indicate which witness you want next.

Mr. Stetson: I will state for the information of the gentlemen that when this transaction concerning this matter took place, Mr. Morgan was in Europe and knew nothing about it except as there might have been limited information sent to him as to the purchase of the stock.

Mr. Young: We object to trying this case on the statements of counsel when we are entitled to witnesses. Anything Mr. Stetson would say to me would be accepted always of course, personally, but we are here on behalf of the State of Kentucky, and we do not want what Mr. Stetson says about these matters. We want the witnesses to appear and make their own statements. We want to try the case on what the witnesses know and not on what counsel know. We are willing to proceed with Mr. Spencer, then Mr. Walters, then Mr. Elliott and then we want Mr. Morgan. We desire to consider the convenience of all parties as far as possible.

Mr. Pratt: We will proceed with the examination of Mr. Spencer, if the Commission please.

SAMUEL SPENCER,

a witness called on behalf of complainants, having been duly sworn, testified as follows:

Mr. Pratt: I will request my associate counsel to conduct the examination of this witness.

Mr. Young: Mr. Spencer, you are President of the Southern Railway Company?

Mr. Spencer: Yes, sir.

Mr. Young: And have been since its organization, I believe?

Mr. Spencer, Yes, sir.

Mr. Young: What is the common stock of the Southern Railway Company?

Mr. Spencer: Do you mean in amount?

Mr. Young: Yes, sir.

Mr. Spencer: $120,000,000.

Mr. Young: What is the preferred stock?

Mr. Spencer: $60,000,000.

Mr. Young: And what is the bonded indebtedness?

Mr. Spncer: About $140,000,000.

Mr. Young: Now, it controls how many miles of railroad, either directly or indirectly? It operates about how many miles?

Mr. Spencer: About 6,700 miles, which includes leased and owned lines and trackage rights over other lines.

Mr. Young: In what State does it operate?

Mr. Spencer: Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Tennessee, Kentucky and Mississippi.

Mr. Young: Indiana?

Mr. Spencer: Indiana and Illinois.

Mr. Young: It is a strong, vigorous competitor of the Louisville & Nashville at many points in those states, is it not?

Mr. Spencer: We hope so. We so understand it.

Mr. Young: You know so, I suppose. You have found that out by this time?

Mr. Spencer: It is.

Mr. Young: It competes with the Louisville & Nashville at St. Louis?

Mr. Spencer: Yes, sir.

Mr. Young: At Louisville?

Mr. Spencer: Yes,sir.

Mr. Young: At Memphis?

Mr. Spencer: Yes.

Mr. Young: At New Orleans.

Mr. Spencer: No.

Mr. Young: At Birmingham?

Mr. Spencer: Yes.

Mr. Young: And through parts of North Carolina and through many parts of Georgia?

Mr. Spencer: Georgia, yes; North Carolina, no.

Mr. Young: Tennessee?

Mr. Spencer: Yes.

Mr. Young: Is it not true that the Louisville & Nashville Railroad is the most potent competitor?

Mr. Stetson: I simply desire to state that counsel it enlarging on his opening if he is depending on the fact that the Louisville & Nashville and the Southern Railway may be competitors outside of the State of Kentucky.

Mr. Young: We hope to show it is a competitor in many States.

Mr. Stetson: We suggest that is wholly immaterial to this investigation.

Mr. Young: If it please the Commission, the real gravamen of the complaint—

The Chairman: We do not understand Mr. Stetson to make a formal objection.

Mr. Young: Mr. Spencer, is it not true that the Louisville & Nashville Railroad was the most vigorous and important competitor of the Southern Railway?

Mr. Spencer: When you say most vigorous and most important I am not quite clear what you mean.

Mr. Young: Take "vigorous." Use the word "vigorous" first.

Mr. Spencer: I do not know that it is any more vigorous than any other; no.

Mr. Young: Take the city of Louisville. Is there not more vigorous competition between the Southern and the Louisville & Nashville in the city of Louisville than any other two railroads?

Mr. Spencer: It is difficult to measure that in general terms. In certain traffic we compete with the Illinois Central with the same vigor and to the same extent as with the Louisville & Nashville.

Mr. Young: Is it not true that there has been very great difficulty, as well as friction, between the Louisville & Nashville and the Southern Railway in the city of Louisville as to terminal advantages and privileges?

Mr. Spencer: There have been differences there; yes; but they have arisen entirly out of the Louisville & Nashville owning terminals that they did not have other people use.

Mr. Young: And which you thought you ought to use?

Mr. Spencer: No, sir; I have never made that contention.

Mr. Young: Is it not true that the Louisville & Nashville denied the Southern equal rights in regard to terminal advantages, in the city of Louisville, with other railroads?

Mr. Spencer: Equal rights with other railroads?

Mr. Young: Yes, sir.

Mr. Spencer: I do not think so.

Mr. Young: Is it not true that the Louisville & Nashville Railroad in the city of Louisville gave the Pennsylvania System—that is, the Pittsburg, Cincinnati, Chicago & St. Louis Railway—advantages in the city of Louisville that it did not give to the Southern Railway in regard to the movement of cars and the price charged for the movement of those cars?

Mr. Spencer: They did not give to a connection advantages which they would not give to a competitor.

Mr. Young: Did not that result in a freight rate war between the Southern, the Illinois Central and the Louisville & Nashville some six or eight weeks ago?

Mr. Spencer: I do not know what you mean by railroad war. There was a disturbance of those rates for a while about the period you speak of. There was some difference of opinion as to what should be done. It was not inaugurated by the Southern. The disturbance was not inaugurated by the Southern but by another line, and the Southern followed.

Mr. Young: Didn't the Southern participate in it?

Mr. Spencer: Yes, sir; the Southern met the situation as it had been precipitated by others.

Mr. Young: And that resulted in large concessions being made to shippers in Louisville on account of drayage, so as to equalize the advantages which the Louisville & Nashville refused to the Southern and to the Illinois Central?

Mr. Spencer: That I can not state from my own knowledge; I am not a traffic man.

Mr. Young: Now, Mr. Spencer, were you at all active in the negotiations which led up to the acquisition of half of the stock of the Chicago, Indianapolis & Louisville Railway on behalf of the Southern railway?

Mr. Spencer: Yes, sir.

Mr. Young: What other line acquired the other half of the stock?

Mr. Spencer: The Louisville & Nashville.

Mr. Young: Can you give the date of those negotiations?

Mr. Spencer: I can not from memory.

Mr. Young: Can you give the date of the consummation of the matter under the agreement?

Mr. Spencer: I can not give that from memory. I can produce the paper. I think it is named in my answer.

Mr. Young: We will ask you to produce a copy of the paper.

Mr. Spencer: We will give you a copy of that.

Mr. Stetson: What paper do you mean?

Mr. Young: I mean a copy of the agreement between the Southern Railway and the Louisville & Nashville in regard to the acquisition of the capital stock of the Monon Railroad.

Mr. McChord: We have that.

Mr. Young: I know it; but we want it in the record.

Mr. Stetson: You have it. Put it in.

Mr. Young: I want the paper to be put in by the proper person. I am not on the witness stand. I am counsel. I am calling on the president of the Southern Railway, who has, legally speaking, custody of the document desired, and I can only prove it by the officer in whose possession it is. Mr. Spencer has agreed to file a copy.

The Chairman: Mr. Spencer stated that he would furnish a copy of that agreement. Are you prepared to produce that paper now, Mr. Spencer?

Mr. Spencer: No, sir.

The Chairman: We understand that a copy of the contract or agreement under which the stock in question was purchased will be filed by Mr. Spencer in connection with his testimony.

Mr. Stetson: That is with reference to the stock of the Monon read, we understand, the contract by virtue of which the Southern Railway and the Louisville & Nashville Railroad purchased the stock of the Monon? Is that correct?

Mr. Young: That is correct.

Mr. Spencer: It is the contract referred to in my answer, under which a majority of the stock was agreed to be purchased by the issue of joint bonds of the Louisville & Nashville and the Southern Railway, and that indenture is dated July 1, 1902, and can be produced at any time. That is the contract which shows the purchase and disposition of the stock.

Mr. Stetson: I am not technical about this at all. That is not the agreement to which my friend refers. That is the pledge of the stock when acquired. You are referring to the agreement. Therefore as counsel has the paper here it is only fair to the witness to show it to him.

Mr. Young: You asked me to produce proof by this witness by my copy. I want him to produce the copy.

Mr. Stetson: The atmosphere of New York and Louisville seems to be different.

The Chairman: There is no disposition to avoid the production of the contract.

Mr. Young: I want two papers from you. I want, first of all, the agreement between the Southern Railway and the Louisville & Nashville Railroad by which this stock was acquired.

The Chairman: Your question implies that there was a contract

between the Louisville & Nashville and the Southern for a controlling interest in the stock of the Monon road.

Mr. Young: Yes, sir. That I want.

The Chairman: Mr. Spencer, was there such a contract?

Mr. Spencer: Yes, sir; there was.

The Chairman: Have you it here?

Mr. Spencer: I have a copy of that which belongs to counsel.

The Chairman: Have you a copy of the contract?

Mr. Spencer: I have a copy of the contract between the Louisville & Nashville and the Southern Railway, and the Standard Trust Company of New York as trustee, relating to the purchase of the Monon stock, dated July 1, 1902, and a Trust Indenture securing the joint bonds which were issued with the Monon stock as security.

Mr. Young: What is the date of that?

Mr. Spencer: That is also dated July 1, 1902.

The Chairman: They will be received.

(The same are hereto attached and marked Exhibits Nos. 1 and 2 —Samuel Spencer.)

Mr. Young: Outside of those two papers, was there any other memorandum in regard to the purchase of this Monon stock?

Mr. Spencer: I do not know of any other.

Mr. Young: You conducted the negotiations, I understand, for the purchase of that stock?

Mr. Spencer: I was a party to the negotiations. I did not conduct them.

Mr. Young: Who conducted them?

Mr. Spencer: I don't know what you mean.

Mr. Young: You had to buy the stock the Southern wanted.

Mr. Spencer: Yes, sir.

Mr. Young: Whow did you use to buy it?

Mr. Spencer: It was bought through brokers—some of it. Some was bought at private sale through bankers. But the real process of purchase by the two companies was that they agreed they would give so many bonds for it, and everybody who had stock was asked to deposit it or not, as they pleased; a majority was deposited, and we became purchasers in that way.

Mr. Young: Was nine-tenths deposited?

Mr. Spencer: I do not think so much.

Mr. Young: A large amount?

Mr. Spencer: It was considerably over the amount required.

Mr. Young: What was the object of the joint purchase of the Monon Railroad from Louisville to Chicago and Chicago to Indianapolis?

Mr. Spencer: To give those two lines of railway a line to Chicago.

Mr. Young: Those two lines could throw their business over the Monon Railroad and make it valuable and control business out of the city of Chicago, independent of other lines?

Mr. Spencer: It could control it through that line?

Mr. Young: There is a large volume of traffic that goes through Louisville from Chicago to the South over the Southern and the Louisville & Nashville?

Mr. Spencer: Yes, sir.

Mr. Young: Have you any idea of the volume?

Mr. Spencer: I could not state it from memory.

Mr. Young: For that stock that was purchased the Louisville & Nashville and the Southern Railway issued collateral bonds and deposited the stock as security for those bonds?

Mr. Spencer: Yes, sir.

Mr. Young: Were you instrumental in any way in securing the securities or in the re-organization of the Southern Railway in Indiana?

Mr. Spencer: I represented the Southern Railway Company in bringing about that re-organization and in the acquisition of that property by the Southern.

Mr. Young: Before the sale under the decree of the United States Circuit Court had you purchased the securities or organized it for the owners of the securities?

Mr. Spencer: It was organized for the owners of the securities|

Mr. Young: Did Mr. Morgan purchase these securities before the sale or when the sale was imminent, or did he agree with the owners of the securities to organize the property for and on behalf of the Southern Railway?

Mr. Spencer: He agreed on behalf of the Southern Railway to organize the properties if the securities were deposited in accordance with the plan presented by that company. Whether he made any purchase at that time as a banker I do not know.

Mr. Young: The Air Line was to pass to the Southern Railway and be operated by it, and is now operated by it as a division of the Southern Railway?

Mr. Spencer: Yes, sir; substantially.

Mr. Young: That enabled the Southern Railway to come into competition at St. Louis for Western business and in territory in which the Southern operated south of Louisville?

Mr. Spencer: That is one thing it did.

Mr. Young: There is sharp competition between the Louisville & Nashville and the Southern Railway between Louisville and St. Louis, is there not?

Mr. Spencer: I so understand.

Mr. Young: Is or was?

Mr. Spencer: Is and was.

Mr. Young: I suppose less of "is" than "was?"

Mr. Spencer: More of "is" than "was."

Mr. Young: I will ask you to state to the Commission at what time, if you know, this stock of the Louisville & Nashville Railroad was purchased by J. P. Morgan & Company.

Mr. Spencer: What is the question?

Mr. Young: What time, if you know, did the firm of J. P. Morgan & Company secure control of a majority of the stock of the Louisville & Nashville Railroad Company?

Mr. Spencer: I understand last summer; I can not give you the date. I was not a party to the transaction.

Mr. Young: Can you give the relative dates as to that transaction and the purchase by the Southern Railway Company and the Louisville & Nashville Railroad Company of a controlling interest in the Monon; whether it was before or after?

Mr. Spencer: I do not know. That is easily ascertainable, but I do not know at the moment. Both occurred during the summer. I do not recall the date.

Mr. Young: There is a competing line held by the Louisville & Nashville out of Cincinnati to Knoxville as well as by the Southern Railway Company through the Cincinnati, New Orleans & Texas Pacific into Knoxville and the territory to which it lays tribute in effect?

Mr. Spencer: I do not quite see that. In the first place, the Southern does not control the Cincinnati, New Orleans & Texas Pacific, and in the other place the Louisville & Nashville has no line from Knoxville that I know of.

Mr. Young: Don't it operate as far as Cumberland Gap and run over a part of the Southern Railway into Knoxville and don't it go to Jellico?

Mr. Spencer: It connects with the Southern, yes, and therefore

there is business passing between Knoxville and Cincinnati which goes partially over the Southern and partially over the Louisville & Nashville.

Mr. Young: Don't the Louisville & Nashville run independent trains over the Southern Railway from Jellico to Knoxville?

Mr. Spencer: It does not, and never did. There is a through car, but they do not run their trains through.

Mr. Young: Don't they run freight trains through?

Mr. Spencer: Freight trains go through. It is a Louisville & Nashville train, with its crew and engine and rules, regulations, and tariffs to Jellico. When it gets to Jellico it changes and the Southern takes charge of it if it is to go through. It is taken possession of by Southern Railway employees, under Southern Railway rules and tariffs, and is a Southern Railway train, just exactly like when the Louisville & Nashville brings business into Louisville and sends, it on to Chicago or New York it turns it over to the Pennsylvania Railroad, say.

Mr. Young: About the time that Messrs. J. P. Morgan & Company acquired a controlling interest in the Louisville & Nashville had not the Louisville & Nashville Railroad organized a line to be built from Knoxville to Jellico?

Mr. Spencer: I so understand it.

Mr. Young: Is that line being constructed?

Mr. Spencer: It is under construction, as I understand it.

Mr. Young: So with the construction of that line the Louisville & Nashville Railroad would have had an independent line from Cincinnati to Knoxville?

Mr. Spencer: Yes, sir: It would.

Mr. Young: And the active operation for the construction of that line began about the time that J. P. Morgan & Company acquired a controlling interest in the Louisville & Nashville?

Mr. Spencer: I can not give the date. They both occurred last summer.

Mr. Young: Tell the Commission, if you can, at how many points in Tennessee there is competition between the Louisville & Nashville Railroad and the Southern Railway?

Mr. Spencer: I should have to get a map and make a study of that.

Mr. Young: A great many?

Mr. Spencer: There are several; yes.

Mr. Young: Twenty, or thirty, or forty?

Mr. Spencer: I should say not so many as that.

Mr. Young: Now, in Georgia?

Mr. Spencer: The Louisville & Nashville does not compete directly with the Southern Railway in the State of Georgia at all.

Mr. Young: It owns a control in a line from Chattanooga to Atlanta?

Mr. Spencer: It owns a majority of the stock of the Nashville, Chattanooga & St. Louis Railway. It does not operate it at all.

Mr. Young: It owns the stock and operates the road as a part of its system, does it not?

Mr. Spencer: No, sir; not as a part of its system. It is not referred to in its annual report or in any public statement so far as I know.

Mr. Young: Don't you know that the Louisville & Nashville owns a majority of the stock of the Nashville, Chattanooga & St. Louis and operates it as part of its system?

Mr. Spencer: If I answer that is I know about it, I say no. I understand it owns a majority of the stock. I understand it to be the case, but I have no personal knowledge.

The Chairman: There is no question about the fact of its holding a majority of the stock. It has been testified to before the Commission and appears in the reports of the Louisville & Nashville Railroad to the Commission, I believe.

Mr. Young: Everybody knows it, but I wanted it in the record; Mr. Spencer, at how many points in the State of North Carolina do the Southern and the Louisville & Nashville come in competition for freight and passengers?

Mr. Spencer: Not at all that I know of.

Mr. Young: Through connections?

Mr. Spencer: That all hinges on what you mean by competition. The Louisville & Nashville does not compete with the Southern Railway in the State of North Carolina.

Mr. Young: Does it not carry passengers out of North Carolina into Louisville?

Mr. Spencer: No, sir.

Mr. Young: Through its connections and its own line?

Mr. Spencer: Its connections may take them, but the Louisville & Nashville does not take passengers out of the State of North Carolina.

Mr. Young: Its connections are not owned by the Southern Railway in the State of North Carolina where it gets business from?

Mr. Spencer: I am not sure I understand that question.

Mr. Young: The roads with which the Louisville & Nashville have connecting arrangements in the State of North Carolina, are not the roads controlled by the Southern Railway?

Mr. Spencer: We connect with them and exchange business with them between North Carolina and their line.

Mr. Young: You do not understand. The lines which give the Louisville & Nashville Railroad traffic out of North Carolina are independent of the control of the Southern Railway?

Mr. Spencer: I think I did understand it. There are lines other than the Southern which can take business out of North Carolina and deliver it to the Louisville & Nashville to be transported by that company. I may add that I think the Southern Railway delivers to the Louisville & Nashville no more business than the other lines.

Mr. Young: What is true in that respect of South Carolina?

Mr. Spencer: The Southern exchanges South Carolina business with the Louisville & Nashville, and other lines do the same I think the other lines do far the most.

Mr. Young: Is it not true that the Atlantic Coast Line Railroad, which I understand operates this railroad, was up to a short time ago a competing line of the Louisville & Nashville Railroad in the States of South Carolina and Georgia?

Mr. Spencer: I am not connected with either company.

Mr. Young: Don't you know that as President of the Southern Railway?

Mr. Spencer: I do not, and do not think it is the case.

Mr. Young: Don't you know as a matter of fact that beginning at Montgomery and going to Jacksonville and other points in Florida the Louisville & Nashville and the Plant System had a connecting line which they operated together for passenger and freight business between Jacksonville and Louisville and Cincinnati?

Mr. Spencer: Yes, sir. That does not touch the State of South Carolina.

Mr. Young: So there was competition between the Louisville & Nashville and the Southern Railway out of Jacksonville and intermediate territory?

Mr. Spencer: The Louisville & Nashville and the Southern both participated in business between those points which was competitive.

Mr. Young: Now, what about Birmingham? Is there any com-

petition between the Southern Railway and the Louisville & Nashville Railroad in business out of Birmingham into Kentucky?

Mr. Spencer: There is direct competition for a considerable amount of business; active competition.

Mr. Young: Do you know anything about the negotiations under which a majority of the stock of the Louisville & Nashville Railroad was purchased by Messrs. Morgan & Company?

Mr. Spencer: Yes, sir; I knew of it as everybody on the street here knew about it.

Mr. Young: Did you have personal knowledge? I am speaking of personal knowledge?

Mr. Spencer. Yes, sir; I had some personal knowledge of it.

Mr. Young: Did you know the objects of that purchase at the time it was made?

Mr. Spencer: I can not speak of the objects of some one else's purchase.

Mr. Young: If some one else told you the objects, the persons who made the purchase, you would know.

Mr. Spencer: There was no statement to me about the objects.

Mr. Young: Did you know anything about the transfer of that stock by Messrs. Morgan & Company, to the Atlantic Coast Line Railroad Company?

Mr. Spencer: I knew it took place in a general way but was not a party to it or personally cognizant of it. I was not in the country at the time it was done.

Mr. Young: And had nothing to do with the negotiations?

Mr. Spencer: No, sir; not at all.

Mr. Young: Do you know how the stock was transferred to the Atlantic Coast Line Railroad Company, whether directly by the Louisville & Nashville, or by an intermediary—by the syndicate that owned it or by an intermediary?

Mr. Spencer: I do not know.

Mr. Young: Mr. Spencer, there is a voting trust of the Southern Railway stock, is there not?

Mr. Spencer· Yes, sir.

Mr. Young: It was organized in 1897, and continued until 1902, and is now being continued from 1902 to 1907?

Mr. Spencer: It was organized in 1894, and expired in 1902, and has since been renewed.

Mr. Young: Who constituted the trustees for the purpose of holding and voting that stock?

Mr. Spencer: J. P. Morgan, Charles Lanier, and George F. Baker.

Mr. Young: What connection had those gentlemen, outside of Mr. Morgan, with the firm of J. P. Morgan & Company?

Mr. Spencer: None that I know of.

Mr. Young: They did not have any business relation with them?

Mr. Spencer: I do not know of any.

Mr. Young: Who are the present voting trustees?

Mr. Spencer: The same three.

Mr. Young: Do you know whether there is a voting trust of the Atlantic Coast Line Company or not?

Mr. Spencer: I do not.

Mr. Young: You say you do not know?

Mr. Spencer: I say that I do not know that there is.

Mr. Young: I will ask you if it is not true that in this agreement made between the Southern Railway Company and the Louisville & Nashville Railroad, in regard to control of the Monon, Mr. Morgan is not made the umpire in all questions which may arise between the two companies in regard to the control of the stock?

The Chairman: Do you mean to ask does that appear by the contract itself?

Mr. Young: Yes, sir.

Mr. Spencer: I would have to examine the contract. I do not know from memory. The contract is in evidence. I do not recall what the terms are on that point.

Mr. Young: I would like to ask this question: What proportion of the stock of the Southern Railway Company is held by the voting trustees or has been passed under their control for the purpose of voting the stock of the Southern Railway?

Mr. Spencer: Substantially all of it. There may be a few shares out, but substantially the whole of it.

Mr. Young: May it please the Commission, we will not ask Mr. Spencer anything further at present. Matters may develop during the investigation as a result of which we will recall him; but for the present we will let Mr. Spencer go.

The Chairman: Do counsel for defendants desire to ask Mr. Spencer any questions?

Mr. Stetson: Yes, sir; I desire to ask Mr. Spencer a few questions. Mr. Spencer, what is the relation, or what was the relation, of the Chicago, Indianapolis & Louisville Railway, ordinarily known as the Monon road, to the Southern Railway and to the Louisville

& Nashville Railroad? Was it a competitive line with either of those roads?

Mr. Spencer: No; not at all.

Mr. Stetson: In the acquisition of that line by those two roads, so far as you know, was there any purpose on the part of the owners of either the Louisville & Nashville Railroad or the Southern System or of any one else to suppress or interfere with competition?

Mr. Spencer: None so far as the Southern was concerned and none as far as either of them were concerned so far as I know.

Mr. Stetson: Or to affect rates?

Mr. Spencer: No, sir.

Mr. Stetson: What was the relation of the so-called Louisville Air Line, the line from Louisville to St. Louis, the Louisville & St. Louis Air Line? Was that a competing railroad with the Southern Railway?

Mr. Spencer: Not at all.

Mr. Stetson: What was it?

Mr. Spencer: It was a connection.

Mr. Stetson: In the acquisition of that railway by the Southern Railway, was there, so far as you know, on the part of anybody any purpose to affect or diminish competition or to affect rates?

Mr. Spencer: No, sir.

Mr. Stetson: With reference to the acquisition by J. P. Morgan & Company, or by the Atlantic Coast Line Railroad Company of the Louisville & Nashville Railroad Company, was there, so far as you know, any purpose on the part of any one in any way whatever to affect or diminish competition or to affect rates?

Mr. Spencer: None whatever.

Mr. Stetson: In any of the instances which I have called to your attention has there been any diminution of competition or affecting of rates through the acquisitions mentioned?

Mr. Spencer: None.

Mr. Stetson: Do you know of any purpose or opportunity on the part of any of the parties mentioned, through such acquisitions, either to affect or diminish competition or affect rates?

Mr. Spencer: I do not.

Mr. Stetson: Have you any personal knowledge or recollection of any agreements with reference to the acquisition of any of these properties other than those that have been referred to?

Mr. Spencer: No, sir.

Mr. Stetson: When did you go abroad last summer?

Mr. Spencer: About the 20th of August.

Mr. Stetson: When did you return?

Mr. Spencer: About the 20th of October.

Mr. Stetson: And the contract for the transfer of the Louisville & Nashville stock to the Atlantic Coast Line Railroad Company, as you understand, had been made during your absence?

Mr. Spencer: I so understand it. I learned of it in London. I learned it from the newspapers in London, really.

Mr. Stetson: Do you know of any action, suggested, proposed, or had by any of the purchasers of any of these railroads, by any of the officers of any of these railroads, or by any one else, to affect competition theretofore previously existing or possible to exist, or to affect traffic or rates? If so, I wish you would state as full as your knowledge permits.

Mr. Spencer: So far as I know the transaction has no bearing upon current rates or current exchanges of traffic, or current competition. That all remains just as it was, so far as I know and so far as the Southern Railway is concerned.

Mr. Stetson: Current or prospective?

Mr. Spencer: Current or prospective.

The Chairman: Do any other counsel for defendants desire to examine Mr. Spencer?

Mr. Baxter: Yes, sir; I have a few questions. Mr. Spencer, in the indenture dated July 1, 1902, between the Louisville & Nashville Railroad Company, the Southern Railway Company, and the Standard Trust Company of New York, which you have heretofore filed as an exhibit to your testimony, I see it is recited that the railroad of the Louisville & Nashville Company and the railroad of the Monon Company are connected at Louisville, in the State of Kentucky, and can be operated together so as to constitute one continuous main line with branches; and said railroad of the Southern Company and said railroad of the Monon Company are in like manner connected at ot near Louisville, and can be operated together as one continuous main line with branches. Is that recital true or false?

Mr. Spencer: It is true.

Mr. Young: Please indicate the page.

Mr. Baxter: Pages one and two, commencing on page one. On page two of said indenture it is recited that the Louisville Company and the Southern Company each desire to acquire an interest in the capital stock of the Monon Company, but it was found impracticable

to acquire a substantial amount of such stock except for the purpose thereof jointly, and by the issue in payment therefor of the joint bonds of the Louisville Company and of the Southern Company as hereinafter provided; and therefore said companies agreed with each other as then follows. Is that recital true?

Mr. Spencer: Yes, sir.

Mr. Baxter: I wish you would state what are the northern termini of the Louisville & Nashville Railroad Company commencing at St. Louis and going eastward.

Mr. Spencer: Of course you know I have no connection with the Louisville & Nashville Railroad. I can state that only from my general understanding of the map.

Mr. Baxter: That is all I asked for. I want it in the record.

Mr. Spencer: Those termini on the Ohio river are Louisville, Evansville, Cincinnati; St. Louis, Memphis and New Orleans on the Mississippi.

Mr. Baxter: What are its Southern termini?

Mr. Spencer: New Orleans, Mobile, Pensacola and River Junction, which is in Florida, about on an extension of the line between Georgia and Alabama.

Mr. Baxter: What are the northern or north-eastern termini of the Atlantic Cost Line Railroad Company?

Mr. Spencer: Richmond and Norfolk are their principal ones.

Mr. Baxter: What are the southern termini of the Atlantic Coast Line Railroad Company?

Mr. Spencer: Jacksonville and Tampa, Florida. They go a little south of Tampa. I am not sure as to the name of the place; to Punta Gorda I believe; and they have a terminus now at Montgomery.

Mr. Baxter: Is there any point except Montgomery, Ala., and River Junction, Florida, where the line of the Atlantic Coast Line Railroad Company touches the line of the Louisville & Nashville Railroad Company?

Mr. Spencer: None that I know of. An Atlantic Coast Line officer would be more familiar with all those details. I do not understand that the Atlantic Coast Line reaches River Junction. That is the Seaboard.

Mr. Baxter: Does the Louisville & Nashville Railroad reach either Richmond or Norfolk with its rails?

Mr. Spencer: Neither.

Mr. Baxter: Does the Atlantic Coast Line Railroad Company

reach either Cincinnati, Louisville, Owensboro, Evansville, or St. Louis with its rails?

Mr. Spencer: It does not so far as I know.

Mr. Baxter: Does the Atlantic Coast Line Railroad reach either Pensacola, Mobile or New Orleans with its rails?

Mr. Spencer: Not as I understand it.

Mr. Baxter: Does the Louisville & Nashville Railroad reach either Tampa or Punta Gorda with its rails?

Mr. Spencer: No.

Mr. Baxter: That is all.

Mr. Young: I want to re-examine Mr. Spencer on a point brought out by Mr. Stetson. How does the Louisville & Nashville Railroad reach Chicago from Evansville?

Mr. Spencer: My understanding is it would be over the Evansville & Terre Haute and Chicago & Eastern Illinois. That is they exchange business with those lines. They do not reach Chicago at all.

Mr. Stetson: I have just received word that Mr. Morgan can be here at one o'clock. I do not know what the convenience of the Commission will be on that point.

The Chairman: It is our custom to take a brief recess for luncheon.

Mr. Stetson: If the Commission would rather have Mr. Morgan come at another hour, I will send word accordingly.

The Chairman: I think it will accommodate our convenience better if you will arrange to have Mr. Morgan here at two o'clock.

Mr. Stetson: Very well.

Mr. Young: Mr. Spencer, the Louisville & Nashville Railroad had a competitive line for freight from Chicago down to Evansville and then over its own line into part of Tennessee, Georgia and Mississippi before the acquisition of the stock of the Monon by the Louisville & Nashville Railroad and the Southern Railway?

Mr. Spencer: There was a line other than the Monon which transported traffic that way, and there is yet.

Mr. Young: If the Louisville & Nashville Railroad had its own line at Louisville, going from Louisville to Chicago, in connection with the Southern, would not that have the effect, more or less, to control freight rates to the points in the South which were reached only by the Louisville & Nashville Railroad?

Mr. Spencer: I think not. I am not an officer of the Louisville & Nashville, but my judgment would be that it would not.

Mr. Young: They have asked your opinion about some general questions. Now, the Louisville & Nashville would have power, so far as its business is concerned from points in the South which were not competitive points, to route its business by the Louisville & Nashville and the Monon as against the Chicago & Eastern Illinois, and practically to control rates from non-competitive points?

Mr. Spencer: Not to practically control rates.

Mr. Young: It has the power, from non-competitive points, to control rates?

Mr. Spencer: It can control its rates to non-competitive points as well without that line as with it.

Mr. Young: If you have a single line it is easier to control rates from non-competitive points than where there are two connections?

Mr. Spencer: Not its own rates.

Mr. Young: I said rates.

Mr. Spencer. That is a complex and difficult question to answer. Through rates on pro-rate divisions are not made from Chicago to the South and from the South to Chicago. The way a rate is made from Chicago to the South is whatever the line charges between Chicago and the Ohio River is added by the Southern to its charges south and the two make the rate. Rates across the Ohio river are not made as they are between Chicago and New York.

Mr. Young: It would enable the Louisville & Nashville, so far as it is concerned to refuse freight or to take freight to its non-competitive points through Louisville or Evansville, and to that extent control rates?

Mr. Spencer. No; for the reason that the two lines to which you refer are not the only lines in that territory between Louisville and Chicago. There are still outside lines.

Mr. Young: What good would that do where the Louisville & Nashville Railroad either took freight to or sent freight from its non-competitive points? Its non-competitive freight I am talking about.

Mr. Spencer: It would be the same in either case. If there was one, or two or three competitive lines out of Chicago soliciting that same business which you say is non-competitive on the line of the Louisville & Nashville, any single one of them could affect that rate question just as well as all of them together can affect it or acting differently can affect it.

Mr. Young: Yes; but the moment the Louisville & Nashville con-

trols its own line into Chicago it is not enabled to do business at non-competitive points independent of connections?

Mr. Spencer: No, sir.

Mr. Young. Why?

Mr. Spencer: The rate being made as I stated, the line from Chicago to the Ohio river can shrink its rate, if so disposed, just as well after the Louisville & Nashville owns an interest in the Monon as before.

Mr. Young: What good would that do when the Louisville & Nashville would control the freight?

Mr. Spencer: It don't control the freight.

Mr. Young: It would at non-competitive points on its own line.

Mr. Spencer: It depends on what you mean by control. If you mean that a shipper shipping out of Chicago would be obliged to ship by that line, no; there are other lines still open.

Mr. Young: What lines are open to shippers: That is, to points on the Louisville & Nashville south of Evansville?

Mr. Spencer: None; but the lines are open to points south of Louisville just as they have been.

Mr. Young: Doesn't that enable the Louisville & Nashville Railroad to compel its competitor controlling its line from Evansville to Chicago, to force that competitor, to shrink its rates to meet the rates which the Louisville & Nashville chooses to make over its own line from Louisville to Chicago by the Monon?

Mr. Spencer: Just as prior to the purchase of the Monon.

Mr. Young: It would not affect it at all?

Mr. Sencer: No, sir; at least it does not affect it at all.

Mr. Young: I am talking about what it could do.

Mr. Spencer: The Louisville & Nashville of course could draw a line around itself and say it would not ship freight any where. I supposed you were addressing yourself to a practical question.

Mr. Young: I think it is a practical question.

Mr. Spencer: Then, practically it has no effect.

Mr. Young: You are not prepared to give a judgment as to what these combinations will do in the future?

Mr. Spencer: I have no authority to speak for the Louisville & Nashville Railroad Company.

Mr. Young: No railroad man, so far as you know, has any such observation or experience as to enable him to forecast the conditions which may arise under these combinations by which two or

three men or two or three systems can control all the freight in the South?

Mr. Spencer: I think we have a pretty good ground for forming an opinion on it. Opinion is pretty well crystallized.

Mr. Young: What experience have you had, or has the country had, in this territory comprising six or seven States?

Mr. Spencer: We have the experience of the last twenty-five or thirty years in which has been brought about the formation of all large railroad systems of America, generally out of small disjointed connecting lines, and that has not been the effect; and therefore I think we have some light as to what can be expected in respect to the handling of such traffic. There are conditions which surround it which are way beyond any theoretical question of what might or might not be done. We know what the effect of all this is when this freight is to be shipped and commercial conditions are brought to bear upon it and we know those things do not exist.

Mr. Young: So far as your own judgment is concerned, you have no knowledge except that knowledge which comes from combinations of smaller lines into trunk lines? You have no experience which enables you to determine when three or four trunk lines are combined under one management as to what effect that will have on freight rates, harmful effects?

Mr. Spencer: I know a good deal to the contrary, not only that they are not there, but no indications that they are going to be there, so far as I know.

Mr. Young: I will get you to state to the Commission whether, to your knowledge, there ever was any attempt made or any proposition was considered as to merging the Southern Railway Company and the Louisville & Nashville at any time?

Mr. Spencer: Never at any time that I know of since the formation of the Southern Railway Company, certainly.

Mr. Young: Didn't the Southern Railway Company take advice of counsel as to whether there was any constitutional objection to the consolidation of the Louisville & Nashville Railroad and the Southern Railway?

Mr. Spencer: Yes, sir; that question has been asked. We like to keep ourselves informed as to what the laws are under which we operate.

Mr. Young: Tell us why you wanted the information. The abstract information would not be of any service to you, would it?

Mr. Spencer; Yes, sir.

Mr. Young: Is that an important fact in railroad operation?

Mr. Spencer: Yes, sir; of course any man owning or any set of men operating a railroad want to know the laws that surround them with reference to any point that might affect them.

Mr. Young: I will ask you if there was not a meeting held in the Waldorf-Astoria in this city in 1899 between the owners of the Southern Railway and the owners of the Louisville & Nashville Railroad, or managers, in which that question of consolidation of the two lines was discussed and considered?

Mr. Spencer: I never heard of it.

Mr. Young: Has there been any since that time?

Mr. Spencer: None.

Mr. Young: That is all we care to ask Mr. Spencer at this time.

Mr. Stetson: Does the Monon Railroad, so called, enter the State of Kentucky?

Mr. Spencer: No, sir.

Mr. Stetson: Has it any main track at all in the State of Kentucky.

Mr. Spencer: No, sir; it owns no track in the State of Kentucky, not to my knowledge. They own some terminals.

Mr. Stetson: Is there any main track?

Mr. Spencer: No, sir; they do not reach there with their main track.

Mr. Stetson: They do not reach their terminals in Kentucky with their main track?

Mr. Spencer: No, sir.

Mrr. Stetson: You have been asked as to the effect which the acquisition by the Louisville & Nashville of an interest in the Monon road might have upon the right which the Louisville & Nashville previously had by agreement or otherwise over the Chicago & Eastern Illinois, and I have understood you to answer that such acquisition of the Monon had no effect, and would have no effect, upon the rates or competition which the Louisville & Nashville want to offer over the Chicago & Eastern Illinois. Am I right?

Mr. Spencer: I answered that it had none so far as I know and that in my opinion it would have none.

Mr. Stetson: That you see no natural effect to result?

Mr. Spencer: That is right.

Mr. Stetson: Now, would any effect of such acquisition of the Monon be other or different than the effect that would have been

produced if the Louisville & Nashville itself built a road from Louisville to Chicago?

Mr. Spencer: No more effect in respect to the matter that you speak of.

Mr. Stetson: If the Louisville & Nashville had chosen to extend its road from Louisville by an entirely new road to Chicago, the effect would have been the same?

Mr. Spencer: The effect would have been to concentrate the traffic on that line then. The present arrangement is to concentrate it on the Monon.

Mr. Stetson: How would the extension of the line of the Southern Railway by a railway of its own from Louisville to Chicago affect that traffic as compared with the effect which might result from the acquisition of the Monon?

Mr. Spencer: I do not know that I get the point.

Mr. Stetson: Would any effect upon competition or traffic produced by the Southern's acquisition of a part interest in the Monon be different from or greater than if the Southern itself had built a road from Louisville to Chicago?

Mr. Spencer: There would be no greater effect, certainly, by a purchase of the interest in the Monon than there would have been by the building of a railroad on the part of the Southern, in fact, the effect would have been the opposite.

Mr. Stetson: Does the acquisition of a half-interest by the Louisville & Nashville and the other half-interest by the Southern in the Monon operate any differently than would have been the case by the construction of a new railroad jointly by these two lines from Louisville to Chicago?

Mr. Spencer: Only that the two lines would have been more apt to concentrate their business on the new line than on the Monon.

Mr. Stetson: My attention is called by Mr. Harrison to the fact that one of the recitals in the indenture is that the Monon operates a railroad from Chicago, in the State of Illinois, to Louisville, in the State of Kentucky.

Mr. Spencer: It operates its trains over the Kentucky & Indiana Bridge, in which it is a one-third owner.

Mr. Stetson: That is a separate corporation?

Mr. Spencer: A separate corporation.

Mr. Stetson: You have been asked as to whether the experience of the last twenty-five years to which you referred embraced the combination of trunk lines with each other as distinguished from the ag-

gregation of connecting lines into trunk lines, and I understood you to answer that you had no such experience in mind. Was I right in that?

Mr. Spencer: That experience is by no means as complete as the other. If did not undertake to answer that question categorically and exactly. That would require an examination of the railroads of the United States, to speak of that.

Mr. Stetson: Allow me to suggest to you by way of illustration this case. You know of the acquisition by the New York Central of the West Shore Railroad and of the Rome, Watertown & Ogdensburg Railroad.

Mr. Spencer: Particularly the first I am familiar with.

Mr. Stetson: And so far as results from the extension of the railway traffic from New York to Buffalo and to the West, were not the New York Central and the West Shore absolute competitors and trunk lines in opposition to each other?

Mr. Spencer: They were undoubtedly. They were so operated.

Mr. Stetson: But originally, prior to 1883 I am speaking of, and so far as relates to business from the west to New England points, was not the Rome, Watertown & Ogdensburg a competitor of the New York Central?

Mr. Spencer: Yes, sir.

Mr. Stetson: Now, since the acquisition by the New York Central of the Rome, Watertown & Ogdensburg and the West Shore roads has there been any effect upon rates between the east and west in consequence of those acquisitions?

Mr. Spencer: I do not think the diminution of rates has been staid at all by it.

Mr. Stetson: Do you know of any effect upon rates by reason of it?

Mr. Spencer: No, sir; but the rate questions in that territory I am not familiar with at the moment.

Mr. Stetson: Have you knowledge of the acquisition of the Nickel Plate, so-called—the New York, Chicago & St. Louis—from Buffalo to Chicago, by the Lake Shore & Michigan Southern Railway?

Mr. Spencer: Yes, sir.

Mr. Stetson: Do you know of any diminution of competition of rates by reason of that acquisition?

Mr. Spencer: I do not know of any such effect upon rates.

Mr. Stetson: And that was because of the existence of other railroads in the same territory.

Mr. Spencer: The existence of other railroads and other competition, and other commercial conditions, which really at last decides how the great traffic shall be moved.

Mr. Stetson: Will those serve as instances of the general proposition?

Mr. Spencer: Yes, sir; it was such things as that I had in mind in making the general answer.

Mr. Stetson: That is all.

Mr. Young: You said a moment ago that the Monon had no tracks or rights in Louisville. Is it not true that they have large freight yards and connections and come into Louisville independently over the Kentucky & Indiana Bridge, in which they are one-third owners?

Mr. Spencer: I corrected my answer by saying they did own their terminals there; but those terminals do not connect directly with their own rails.

Mr. Young: They have now an independent connection in the city of Louisville with the Southern Railway and the B. & O. Southwestern?

Mr. Spencer: Yes, sir; those three companies own the bridge and each has the right to use the bridge with their own engines, crews and trains.

Mr. Young: So to all practical purposes they have an independent line from Louisville to Chicago?

Mr. Spencer: Yes, sir.

Mr Young: Has the Louisville & Nashville any interest in that bridge?

Mr. Spencer: None.

Mr. Young: Was this acquisition by the Monon of an interest in the K. & I. Bridge antecedent to the transaction by which the Louisville & Nashville and the Southern acquired the Monon?

Mr. Spencer: Some time prior.

Mr. Young: That is all.

Mr. Elliott: With the permission of the Commission I would like to say to counsel for complainants that Mr. Erwin of the Atlantic Coast Line Railroad Company has important business that requires him to be in Hartford to-morrow in connection with important litigation in which he is personally interested, and, if it will not interfere with their plans, I would ask whether they will consent to take

his examination up to-day, and, if not, to excuse him until Monday. He has been here all day and ready to testify, and is now.

Mr. Young: We will be glad to accommodate Mr. Erwin by taking him up now. We will waive Mr. Morgan's call for the present and take Mr. Erwin next, after Mr. Spencer's examination is concluded.

Mr. Elliott: I will say that Mr. Erwin has only been President of the road since the third of November and it would only take a few minutes to get through with him.

Mr. Stetson: I believe you could get through with him in ten minutes. If he could be called now I do not think it would take over ten minutes.

Mr. Young: I think it will take more than that.

The Chairman: We will hear Mr. Erwin before recess or just after Mr. Morgan.

Commissioner Prouty: How many miles of railroad did you say the Southern Railway operated or controlled?

Mr. Spencer: About 6,700 miles.

Commissioner Prouty: In that mileage did you include the Mobile & Ohio Railroad?

Mr. Spencer: No, sir.

Commissioner Prouty: Is that controlled by the Southern?

Mr. Spencer: Yes, sir; the stock is controlled by the Southern.

Commissioner Prouty: You are President of that company?

Mr. Spencer: I am President, yes, sir.

Commissioner Prouty: Did you include the Cincinnati Southern?

Mr. Spencer: The Southern does not own it.

Commissioner Prouty: By what company is it owned?

Mr. Spencer: By the C., N. O. & T. P. Company.

Commissioner Prouty: You are President of that comany?

Mr. Spencer: Yes, sir.

Commissioner Prouty: You do not include the Monon in that mileage?

Mr. Spencer: No, sir.

Commissioner Prouty: Taking the territory east of the Illinois Central Railroad and south of the Norfolk & Western Railway, and treating the Louisville & Nashville with the Chattanooga road as belonging to the same system, the four great systems are the Southern Railway, the Louisville & Nashville, the Seaboard, Air Line and the Atlantic Coast Line, are they not?

Mr. Spencer: Those are the four largest systems; yes, sir.

Commissioner Prouty: And is there any system or any railway operating in that territory which could produce any important effect on rates provided those four systems were under a common management or interest?

Mr. Spencer: On certain rates; yes, sir. A very small line can frequently affect rates.

Commissioner Prouty: What line or system operates in that territory which could produce an important effect on rates?

Mr. Spencer: What is known familiarly as the "Frisco, reaching Birmingham now and about to reach New Orleans. could have a very material effect. Rates disturbed at Memphis and Birmingham would ramify all through that country.

Commissioner Prouty: The Southern operates both in the eastern part and western part of that territory, does it not?

Mr. Spencer: Yes, sir.

Commissioner Prouty: The operations of the Louisville & Nashville are confined largely to the western part?

Mr. Spencer: Yes, sir.

Commissioner Prouty: And the operations of the Seaboard, Air Line, and the Atlantic Coast Line, are in the eastern part?

Mr. Spencer: Yes, sir.

Commissioner Prouty: The Louisville & Nashville and the Southern Railway being active competitors in the western part?

Mr. Spencer: Yes, sir.

Commissioner Prouty: In your judgment as a railroad man would it be of much practical importance to the Southern Railway that the Louisville & Nashville should be operated in harmony with it?

Mr. Spencer: Undoubtedly.

Commissioner Prouty: You say that Mr. Morgan and Company largely control the Southern Railway?

Mr. Spencer: Mr. Morgan is one of the voting trustees.

Commissioner Prouty: And you understand that Mr. Morgan did at one time control 306,000 shares of the capital stock, which controlled that corporation?

Mr. Spencer: Yes, sir; I do.

Commissioner Prouty: So far as you conjecture or know, how does it happen that Mr. Morgan, being so largely interested in the Southern and having control of the Louisville & Nashville, parted with control of the Louisville & Nashville to some company not in harmony with the Southern?

Mr. Spencer: That is primarily, as I am sure the Commission will understand, a question for Mr. Morgan, and not for me.

Commissioner Prouty: Did you have any talk with Mr. Morgan about that?

Mr. Spencer: Practically none. Mr. Morgan was in Europe when the thing was first broached, and I sailed for Europe before he got back. The whole thing was consummated before I got back.

Commissioner Prouty: But you thought yourself it was a foolish performance?

Mr. Spencer: What was?

Commissioner Prouty: To part with the control of your competing line.

Mr. Spencer: Most emphatically, no. I do not think Mr. Morgan as a banker would want to own 360,000 shares of a railroad and operate it.

Commissioner Prouty: Why did the Louisville & Nashville and the Southern go into partnership for the purpose of purchasing the Monon?

Mr. Spencer: I can only speak for one partner. The reason we went in was, the property was for sale and if any one was to have an interest north of the Ohio river we wanted to be on an equal footing with them, and we had an opportunity to do it jointly, and I did not want anybody to do it singly. If the Louisville & Nashville had done it singly, the Southern Railway would have been at a serious disadvantage.

Commissioner Prouty: Why?

Mr. Spencer: Because they would have then operated a line of their own beyond the boundary-line where we operated one. They could have solicited business out of Chicago over their own line. We would have had to solicit business out of Chicago over a connecting line in which we had no interest, and they had no interest in us.

Commissioner Prouty: And you say that had no effect on rates?

Mr. Spencer: No; not necessarily on rates. It might on the volume of traffic; not necessarily on rates.

The Chairman: Are you likely to require Mr. Spencer's further attendance?

Mr. Young: Not unless we give him ample notice.

The Chairman: Would you be willing to examine Mr. Erwin now, if it will be brief?

Mr. Young: I am sure it will not be brief. I know it will not be brief.

The Chairman: If you have some witness you can call, we will sit fifteen minutes longer before taking a recess.

Mr. Elliott: Suppose you start with Mr. Erwin.

Mr. Young: Very well; I have no objection.

R. G. ERWIN,

a witness called on behalf of complainants, having been duly sworn, testified as follows:

Mr. Young: Mr. Erwin, you are president of the Atlantic Coast Line Company?

Mr. Erwin: Yes, sir.

Mr. Young: How long have you been president?

Mr. Erwin: Since the 17th of November, 1902. I understood you to ask if I was president of the Atlantic Coast Line Railroad Company.

Mr. Young: No; the Atlantic Coast Line Company.

Mr. Erwin: No; not of the Atlantic Coast Line Company.

Mr. Young: Of the Atlantic Coast Line Railroad Company?

Mr. Erwin: Yes, sir.

Mr. Young: Now, that line extends between what principal points?

Mr. Erwin: Richmond on the north; Punta Gorda on the extreme south, and Montgomery on the west.

Mr. Young: Comprising how many miles?

Mr. Erwin: The Atlantic Coast Line Railroad Company has a mileage of about 3,500 miles.

Mr. Young: Was that after or before the acquisition of what was known as the Plant System?

Mr. Erwin: After the acquisition, as it stands to-day, the Atlantic Coast Line Railroad Company owns and operates about 3,500 miles of road, besides which it controls by stock ownership about 900 miles additional, made up of the Charleston & Western Carolina Railroad, and a little road in South Carolina, the name of which I have forgotten; I think it is called the Northwestern, or North something; it is a very small road; then the Sanford & St. Petersburg, and the Florida Southern. These lines I have mentioned are controlled by stock ownership; making the whole mileage controlled by the Atlantic Coast Line Railroad Company about 4,400 or 4,500 miles. Besides that the Atlantic Coast Line

Railroad Company owns, subject to collateral mortgage, 306,000 shares of the Louisville & Nashville Railroad Company.

Mr. Young: When did the Atlantic Coast Line Railroad Company acquire the Plant System?

Mr. Erwin: The agreement for its acquisition was made last spring. It actually went into possession on the 1st of July, 1902.

Mr. Young: Now, what mileage did the Atlantic Coast Line Railroad Company have prior to the acquisition of the Plant System?

Mr. Erwin: It owned and controlled about 2,100 miles of track.

Mr. Young: It secured about 1,100 miles through the acquisition of the Plant System?

Mr. Erwin: It secured about 2,100 or 2,200 miles of the Plant System. The Atlantic Coast Line was about the same. The Plant System was the name given to four railroads—the Savannah, Florida & Western Railway, the Sanford & St. Petersburg, the Florida Southern and the St. John & Lake Eustis.

Mr. Young: The Plant Line had a line of steamships to New York?

Mr. Irwin: No, sir.

Mr. Young: What company owns that?

Mr. Erwin: The Central Railroad of Georgia, I would say from belief.

Mr. Young: Who owns the Atlantic Coast Line Railroad Company?

Mr. Erwin: Its stockholders.

Mr. Young: What connection has the Atlantic Coast Line Company with the Atlantic Coast Line Railroad Company?

Mr. Erwin: It owns a majority of the stock of the Railroad Company.

Mr. Young: Then the Atlantic Coast Line Company controls the Atlantic Coast Line Railroad Company?

Mr. Erwin: It does.

Mr. Young: Through the control of a majority of its stock?

Mr. Erwin: Yes, sir.

Mr. Young: What proportion of the stock of the Atlantic Coast Line Railroad Company is held by the Atlantic Coast Line Company?

Mr. Erwin: A little more than half.

Mr. Young: When was the Atlantic Coast Line Company organized?

Mr. Erwin: That I do not know. I have no official connection with the Atlantic Coast Line Company.

Mr. Young: Could you give the Commission some idea of the number of stations on the Atlantic Coast Line Railroad Company's property which are non-competitive?

Mr. Erwin: No; I could not state the number. I could take a map and work it out.

Mr. Young: But as a railroad man you know, I should say, that practically four-fifths of the stations on that road are non-competitive points?

Mr. Erwin: Numerically, yes; I should say three-fourths or four-fifths, to make a guess at it.

Mr. Young: Just an approximation is good enough for the purpose in this case. How did the Atlantic Coast Line Railroad Company purchase the Plant System?

Mr. Erwin: By purchase of the Plant Investment Company of all the stocks which the Plant Investment Company owned, representing a control in the roads known as the Plant System.

Mr. Young: To what extent was there competition between the Atlantic Coast Line Railroad Company and the Plant System?

Mr. Erwin: To no extent, except as all railroads in this country are competitive more or less. In other words, the Atlantic Coast Line and the New York Central are to-day competitors to a certain extent, and the Atlantic Coast Line may be a competitor with the Richmond, Fredericksburg & Potomac, or it may be with the Florida East Coast Line, but it is not actual, active competition; it is only possible competition. I should say there was no actual or active competition between the Coast Line and the Plant System.

Mr. Young: They were competitors at Savannah?

Mr. Erwin: No.

Mr. Young: Columbia?

Mr. Erwin: No; they were not and never had been.

Mr. Young: They were competitors at Jacksonville?

Mr. Erwin: No, sir.

Mr. Young: At Birmingham?

Mr. Erwin: No, sir.

Mr. Young: Well, at what points did they have common terminals?

Mr. Erwin: The Atlantic Coast Line and the Plant system join at Charleston, South Carolina but they were not competitors at Charleston.

Mr. Young: Don't both have lines into Charleston?

Mr. Erwin: Yes, sir; one from the north and the other from the south. They were continuous lines.

Mr. Young: There would be competitive freight out of Charleston east and west and north and south which might be controlled?

Mr. Erwin: Oh, yes; to some very small extent there might have been.

Mr. Young: The Plant System did an active freight and passenger business from Savannah and Jacksonville through Montgomery in connection with the Louisville & Nashville Railroad to points west?

Mr. Erwin: Yes, sir.

Mr. Young: Did it have any for the East that way?

Mr. Erwin: You mean did the Plant System do any business for the East with the Louisville & Nashville?

Mr. Young: Yes.

Mr. Erwin: No.

Mr. Young: With any other line?

Mr. Erwin: Did it do business for the East with any other lines except the Atlantic Coast Line?

Mr. Young: Yes, sir.

Mr. Erwin: Yes, sir; in connection with the Southern Railway.

Mr. Young: Then between the Plant System and the Southern Railway there was competition as against the Atlantic Coast Line Railroad Company?

Mr. Erwin: No, sir.

Mr. Young: You go to Richmond?

Mr. Erwin: The Atlantic Coast Line goes to Richmond.

Mr. Young: Don't the Seaboard Air Line go to Richmond?

Mr. Erwin: Yes, sir. I understood you to ask me whether there was competition between the Plant System and the Southern against the Atlantic Coast Line.

Mr. Young: What I meant was that the Southern and the Plant System could, to a certain extent, compete in rates as against the Atlantic Coast Line Railroad Company.

Mr. Erwin: It could, but it did not. As a matter of fact, there was never any competition. The competition that existed was between the Coast Line and the Southern Railway.

Mr. Young: It could exist?

Mr. Erwin: It did exist between the Southern and the Coast

Line, but there was none between the Plant System and the Southern against the Coast Line, or *vice versa*.

Mr. Young: Do you know anything at all about the negotiations which led up to the acquisition by the Atlantic Coast Line Railroad Company of 306,000 shares of the Louisville & Nashville Railroad stock?

Mr. Erwin: No, sir; I had no connection with the Atlantic Coast Line Railroad until November.

Mr. Young: Did you talk with no one who had part in the negotiations?

Mr. Erwin: I have talked with them, but not about the negotiations.

Mr. Young: The Atlantic Coast Line Company now controls how many lines of railroad?

Mr. Erwin: It controls only the ones I have stated.

Mr. Young: Don't it control the Louisville & Nashville Railroad Company? It directs its policy by controlling a majority of the stock?

Mr. Erwin: Indirectly; but the Atlantic Coast Line Company does not own the stock.

Mr. Young: It controls its policy by owning a majority of the stock of the Louisville & Nashville Railroad Company?

Mr. Erwin: No, sir. The Atlantic Coast Line Company owns a majority of the stock of the Atlantic Coast Line Railroad Company, and the Atlantic Coast Line Railroad Company owns a majority of the stock of the Louisville & Nashville Railroad.

Mr. Young: But the Atlantic Coast Line Company, through control of a majority of the stock of the Atlantic Coast Line Railroad Company, controls both the Atlantic Coast Line Railroad Company and the Louisville & Nashville Railroad Company?

Mr. Erwin: That is an inference. The facts are as I have stated, that the Atlantic Coast Line Company owns a majority of the stock of the Atlantic Coast Line Railroad Company, and the latter company, the Railroad Company, owns a majority of the stock of the Louisville & Nashville Railroad Company.

Mr. Young: When did the Atlantic Coast Line Railroad Company acquire a majority of the stock of the Louisville & Nashville Railroad Company?

Mr. Erwin: The stock was delivered on or about the first day of December, 1902.

Mr. Young: Did you have anything to do with the negotiations which led up to that purchase?

Mr. Erwin: Nothing whatsoever.

Mr. Young: Who conducted the negotiations on behalf of the Atlantic Coast Line?

Mr. Erwin: From information and belief I would answer Mr. Walters.

Mr. Young: Mr. Walters is the president of the Atlantic Coast Line Company?

Mr. Erwin: No, sir; Mr. Walters is chairman of the Board of Directors of the Atlantic Coast Line Railroad Company. Mr. Elliott is president of the Atlantic Coast Line Company to-day.

Mr. Young: And what are you?

Mr. Erwin: I am president of the Atlantic Coast Line Railroad Company.

Mr. Young: Do you know any of the considerations which induced the purchase by the Atlantic Coast Line Railroad Company of the majority of the stock of the Louisville & Nashville Railroad Company?

Mr. Erwin: You mean the motives by the "considerations?"

Mr. Young: Yes, sir.

Mr. Erwin: No, sir; I do not. I was not connected in any way with either the Coast Line Company or the Coast Line Railroad Company prior to the 17th of November last, and knew nothing really more about it than what one knew by rumor.

Mr. Young: Do you know whether the stock of the Atlantic Coast Line Company is held by trustees for voting purposes?

Mr. Erwin: Not to my knowledge, or even to the best of my knowledge and belief.

Mr. Young: Were you present at the meeting of the Atlantic Coast Line Railroad Company on the 9th of October, 1902?

Mr. Erwin: I was not.

Mr. Young: Where were you at that time, Mr. Erwin?

Mr. Erwin: I do not remember that exact date, but on or about that time I was either in New York or Hartford, Connecticut. I may have been south; I am not sure. If I look at my memorandum book I may be able to answer that question.

Mr. Young: At that time were you not president of the Atlantic Coast Line Railroad Company?

Mr. Erwin: No, sir; I only became its president on the 17th of November.

Mr. Young: Where were you in the interval between the acquisition of the Plant System—and what office did you hold—between that and your becoming president of the Atlantic Coast Line Railroad Company?

Mr. Erwin: I held no office in connection with any railroad company.

Mr. Young: Are you a member of the Board of Directors of the Atlantic Coast Line Railroad Company?

Mr. Erwin: Yes, sir; I am. Under its charter the board is composed of the president and directors.

Mr. Young: And you are an *ex-officio* member?

Mr. Erwin: Yes, sir.

Mr. Young: Were you present at any of the meetings which had any connection with the issuing of securities by the Atlantic Coast Line Railroad Company for the purchase of the stock of the Louisville & Nashville Railroad Company?

Mr. Erwin: I was present at two meetings on the 17th of November; one a special stockholders' meeting, and the other a directors' meeting confirming the purchase.

Mr. Young: Could you produce a copy of the minutes of those meetings at which that matter was brought up?

Mr. Erwin: They will be produced.

Mr. Young: I will ask you to kindly file them.

Mr. Erwin: I do not know whether they are attached to the answer in this case. They will be produced.

Mr. Elliott: You mean only as far as relates to the purchase of the stock.

Mr. Young: Yes, sir.

Mr. Erwin: I did not participate in those meetings. I happened to be present in the room. I was not president at that time. I was elected the same day, but after those meetings.

Mr. Young: Now, I will get you to state whether that stock was directly acquired through Mr. Morgan or through the intervention of a syndicate?

Mr. Erwin: That I do not know. The only knowledge I have that bears on that question is this: That on or about the 1st of December script representing 306,000 shares of Louisville & Nashville stock was delivered to theAtlantic Coast Line Railroad Company, or to me as its president, by J. P. Morgan & Co., the scrip reading in the name of the Atlantic Coast Line Railroad Company; and on the same day that stock was assigned by me to the New York Se-

curity and Trust Company as trustee under a trust collateral mortgage to secure $35,000,000 of bonds.

Mr. Young: Do you know what was done with those bonds?

Mr. Erwin: Yes, sir; I delivered those bonds to J. P. Morgan & Co. on that date.

Mr. Young: Was that the sole consideration for the 306,000 shares of Louisville & Nashville stock?

Mr. Erwin: No, sir.

Mr. Young: What was the other consideration?

Mr. Erwin: It was $10,000,000 in cash—we did not actually deliver the cash that day, but delivered what was taken as an equivalent to cash which was an agreement to pay from the proceeds of the sale of the Atlantic Coast Line stock $10,000,000—and also $5,000,000 in Atlantic Coast Line Railroad stock.

Mr. Young: Do you know who took the stock of the Atlantic Coast Line Railroad at $10,000,000?

Mr. Erwin: Yes, sir; the stockholders of the Atlantic Coast Line Railroad Company.

Mr. Young: Do you know anything about who they are?

Mr. Erwin: Yes, sir; as I have told you, the principal stockholder is the Atlantic Coast Line Company. The minority stockholders are, I believe, about 500 in number, and I do not, of course, remember all of their names, I remember quite a number of them.

The Chairman: Unless your examination is almost concluded, we will take a recess.

Mr. Young: I can not conclude right now, but can conclude it in a few minutes after recess.

The Chairman: We will take a recess until 2 o'clock.

At 1:15 p. m., the Commission took a recess

AFTER RECESS.

2 o'clock P. M.

The Chairman: Are you ready to proceed?

Mr. Young: We are.

The Chairman: You may proceed with the examination of Mr. Erwin.

R. G. Erwin resumed the stand.

Mr. Young: Mr. Erwin, you operate the Atlantic Coast Line Railroad Company. I want to ask you this question: In that operation of the Atlantic Coast Line Railroad Company, do you

or do you not operate the line in harmony with the suggestions and wishes of the Atlantic Coast Line Company?

Mr. Erwin: Speaking for myself, I do not consult any officer of the Atlantic Coast Line Company unless he happens to be an officer also of the Atlantic Coast Line Railroad Company with reference to any matters connected with the operation of the railroad; but as a matter of fact the Atlantic Coast Line Company does control the railroad company by the same name, and therefore its policies.

Mr. Young: In the operation of the Atlantic Coast Line Railroad Company, so far as would be proper under your own convictions of what is right for a man to do, you operate or would operate the Atlantic Coast Line Railroad Company in conformity to the wishes of the Atlantic Coast Line Company?

Mr. Erwin: Yes, sir; to the same extent as an officer of a railroad always operates his railroad in conformity to the wishes of the stockholders, the ordinary wishes.

Mr. Young: You are the head of the Atlantic Coast Line Railroad Company and the final judge of the conduct of all its operations?

Mr. Erwin: Of its operations, yes, sir. Mr. Walters is chairman of the board, as I have said, of the railroad company.

Mr. Young: But you are really the active officer in the operation of the road?

Mr. Erwin: In the operation of the road, yes, sir.

Mr. Young: If in the operation of that road the Atlantic Coast Line Company directed you to make certain arrangements or agreements with the Louisville & Nashville Railroad Company for either the movement of freight or passengers, would you or would you not follow the directions of the Atlantic Coast Line?

Mr. Erwin: If I considered them proper, I would. I mean by that, unless they were improper.

Mr. Young: Unless they involved dishonorable conduct on your part as a man, you would carry out all suggestions or directions of the Atlantic Coast Line Company?

Mr. Erwin: I would consider it remarkable if the stockholder undertook to tell the executive officer how to operate it.

Mr. Young: But you would operate it as you were told by the Atlantic Coast Line officers in so far as they gave directions about operations?

Mr. Erwin: Yes, sir; everything within the scope of their authority I certainly would.

Mr. Stetson: By permission of Col. Young and the Commission, I have just left Mr. Morgan and have told him that it was desirable to complete Mr. Erwin's examination and for him to come here at 3 o'clock unless he heard from me to the contrary. He said he would do that, but would come upon call. It would be more convenient for him to come to-morrow at 12 o'clock. So far as Col. Young is concerned he is perfectly willing. I do not know what the pleasure of the Commission may be.

The Chairman: We would prefer to have Mr. Morgan come at three.

Mr. Stetson: Very well; he will be here at three.

Mr. Young: Mr. Erwin, has at any time the question of the policy of the Atlantic Coast Line Railroad Company and the Southern Railway or the Louisville & Nashville been brought to your attention as the operating officer of the Atlantic Coast Line Railroad?

Mr. Erwin: Not directly. It is almost, I was going to say, a daily occurrence that matters come up with reference to both the Louisville & Nashville and the Southern Railway in regard to business which requires some action by me. I mean nobody asks me that question, but matters come up for my consideration which involve action on my part.

Mr. Young: If the Atlantic Coast Line Company should direct you to make certain traffic arrangements or agreements with the Louisville & Nashville Railroad you would follow its direction, would you not?

Mr. Erwin: If the Atlantic Coast Line Company, acting through its officials should come and give me directions about making a traffic agreement, I am rather disposed to think that I would ask them whether they did not think it would be better to get some one else to do my work. I mean by that that a stockholder would never undertake to determine details in traffic. If you mean in the matter of general policy, I would do it.

Mr. Young: So, in so far as the operation of the Atlantic Coast Line Railroad Company in matters of general policy is concerned, you would follow the suggestions of the Atlantic Coast Line Company?

Mr. Erwin: Certainly, or their directions.

Mr. Young: Practically then the Atlantic Coast Line Railroad

Company is subject to the control and direction of the Atlantic Coast Line Company?

Mr. Erwin: To the same extent that every railroad property is subject to the will and wish of a majority of its stockholders, and no more and no less.

Mr. Young: Well, stockholders have absolute power unless prevented by either constitutional or legislative enactments.

Mr. Erwin: Stockholders do not act on the operations of the road directly.

Mr. Young: Through their board of directors?

Mr. Erwin: The board of directors certainly do.

Mr. Young: And the Atlantic Coast Line Company has the right and power to elect the directors of the Atlantic Coast Line Railroad Company?

Mr. Erwin: Certainly it has.

Mr. Young: Those elections occur every year?

Mr. Erwin: Yes, sir.

Mr. Young: I do not think we care to ask Mr. Erwin anything further.

Mr. Elliott: We do not desire to ask Mr. Erwin any questions.

Mr. Baxter: Mr. Erwin, would you obey an order from the Atlantic Coast Line Company which in your opinion was illegal?

Mr. Erwin: I certainly would not.

Mr. Baxter: Would you obey any order of the Atlantic Coast Line Company in reference to the operation of the Atlantic Coast Line Railroad Company that you would not obey if made to you by any individual who happened to be the holder of the majority of the capital stock of your company?

Mr. Erwin: I would not.

Mr. Baxter: Have you any knowledge, information or belief that there now exists or has at any time existed any pact or contract or agreement or understanding, express or implied, written or oral on the part of J. P. Morgan & Co., or any other person or persons to bring under one common control or management or community of interest the Atlantic Coast Line Railroad, the Louisville & Nashville Railroad and the Southern Railway?

Mr. Erwin: I have not, sir.

Mr. Baxter: That is all.

The Chairman: Do counsel for defendants desire to ask Mr. Erwin any further questions?

Mr. Elliott: No further questions.

The witness was excused.

H. WALTERS,

a witness on behalf of the complainant, being duly sworn, testified as follows:

Mr. Young: Mr. Walters, what relation do you bear to the Atlantic Coast Line Company?

Mr. Walters: At present I am chairman of the board. During these negotiations I was president.

Mr. Young: When was the Atlantic Coast Line Company organized?

Mr. Walters: I can not tell you exactly—about 1890.

Mr. Young: How long has the Atlantic Coast Line Company controlled a majority of the stock of the Atlantic Coast Line Railroad Company?

Mr. Walters: Well, at the time the Atlantic Coast Line Company was formed, there was no Atlantic Coast Line Railroad Company. There were a number of small roads, but practically the Atlantic Coast Line Company controlled each one of those small roads through the ownership of a majority of its stock.

Mr. Young: When were they consolidated into what we now know as the Atlantic Coast Line Railroad Company?

Mr. Walters: About three years ago.

Mr. Young: And since that time the Atlantic Coast Line Company has owned a majority of the capital stock?

Mr. Walters: Yes, sir.

Mr. Young: What proportion?

Mr. Walters: At the present time we own nearly three-fourths, but when all this stock which is now being issued to pay for this purchase is out, they will own something over a majority—not a great deal, but still a majority.

Mr. Young: What is the capital stock of the Atlantic Coast Line Railroad Company?

Mr. Walters: $28,150,000.00. There will be eight million, five hundred thousand more than that of common stock when all is issued, and $1,770,000 preferred.

Mr. Young: In the neighborhood of forty millions?

Mr. Walters: Yes, sir.

Mr. Young: How much bonded debt has the Atlantic Coast Line Railroad?

Mr. Walters: It had about sixty-six millions and this thirty-five millions additional.

Mr. Young: You speak of thirty-five millions. When was that thirty-five millions issued?

Mr. Walters: It was part of the purchase of this Louisville & Nashville stock and has been delivered to Messrs. J. P. Morgan & Co., within the last thirty days, the actual bonds. There was a contract to deliver previous to that.

Mr. Young: The bonds delivered were thirty-five millions?

Mr. Walters: Yes, sir.

Mr. Young: What else did the Atlantic Coast Line Railroad Company pay for the stock of the Louisville & Nashville Railroad, three hundred and six thousand shares?

Mr. Walters: Five millions of its own stock and ten millions cash, which cash it raised by selling to its own stockholders $8,500,000 of its own stock. The stockholders took it at 125, and it gave them a little more than ten millions.

Mr. Young: You mean the Atlantic Coast Line Railroad Company stockholders?

Mr. Walters: Yes, sir.

Mr. Young: Did you negotiate the purchase of the stock of the Louisville & Nashville railroad?

Mr. Walters: I did it to very near the time it was closed; then I called in to help me Mr. Jenkins and Mr. Elliott.

Mr. Young: What is Mr. Jenkins' first name?

Mr. Walters: Michael.

Mr. Young: What does he do?

Mr. Walters: He is a director of our companies.

Mr. Young: Of both companies?

Mr. Walters: Yes, sir; and also vice-president of the Atlantic Coast Line Company, not the railroad.

Mr. Young: Is Mr. Jenkins a director of the Louisville & Nashville railroad also?

Mr. Walters: Yes, sir.

Mr. Young: Have you any connection with the Louisville & Nashville?

Mr. Walters: Yes, sir; I am a director also.

Mr. Young: One of the recently elected directors?

Mr. Walters: Yes, sir.

Mr. Young: Will you kindly tell us, at this recent election, how many gentlemen interested in the Atlantic Coast Line Company were made directors of the Louisville & Nashville railroad?

Mr. Walters: Five.

Mr. Young: Name them.

Mr. Walters: Mr. Warren G. Elliott, Michael Jenkins, Warren Delano, Jr., R. G. Erwin and myself.

The Chairman: What is the total number of directors?

Mr. Walters: Thirteen.

The Chairman: How many?

Mr. Walters: Thirteen, that is, the President and twelve.

Mr. Young: Kindly tell us how the Atlantic Coast Line Company or the Atlantic Coast Line Railroad Company was induced to buy the 306,000 shares of Louisville & Nashville Railroad stock.

Mr. Walters: I was abroad last spring and got a letter from a personal friend. I saw it first in the newspapers, but I got a letter detailing it and sending me clippings from the newspapers in regard to the Hawley and Gates matter and the fact that it was reported that J. P. Morgan & Company had gotten an option on that stock. The Louisville & Nashville was the principal connection of the Plant System and was an important connection of our own, and we realized that J. P. Morgan & Company were not going to keep that railroad. We knew the laws of Kentucky would not permit them to operate that in connection with the Southern Railway and we felt sure that it would be sold and I came home at once and went to see them to talk the matter over.

Mr. Young: Went to see whom?

Mr. Walters: J. P. Morgan & Co.

Mr. Young: Who did you see there?

Mr. Walters: At that time the first person I saw was Mr. Charles Steele.

Mr. Young: Give us, as far as you can, the date of that meeting between you and Mr. Steele?

Mr. Walters: It was about the end of April.

Mr. Young: Well, go on.

Mr. Walters: He then stated that what I had seen in the paper was practically correct, that they had, I understood it to be an option. At all events, they said they were in a position to deliver the stock and I said, if we could make proper terms, we would be glad, if they wanted to sell it to buy it. Then we discussed terms and kept on discussing terms until September, and in the meantime another member of the firm of J. P. Morgan & Company had taken the matter up actively also, and in September we concluded the terms. We finally made them a straight offer for the

property, which is the offer we have enumerated here, and which they accepted.

Mr. Young: Did you see Mr. Morgan in connection with this transaction?

Mr. Walters: Yes, sir.

Mr. Young: When?

Mr. Walters: Late in the summer he came home and before this matter was closed, and as is usually the case with the head of a house, he has to be consulted before any final transaction is made, I presume they did consult him, and he came into the conference, I think twice for a very few minutes, but finally he was the person who did make the sale.

Mr. Young: Do you know whether anybody else at the time of these negotiations was seeking to purchase this stock?

Mr. Walters: By rumor only.

Mr. Young: You did not know it from the parties with whom you dealt?

Mr. Walters: Well, yes. One of the conditions I made very shortly after my first interview when we found we could not agree on terms at once was that as long as our negotiations should continue, that such negotiations would not be opened with anybody else. They told me later, sometime in June, that Mr. Williams of the Seaboard Air Line had approached them on the subject and in accordance with their agreement with me they told them they could not negotiate with them at that time, or something of that sort.

Mr. Young: Now, did you enter into any contract with the firm of J. P. Morgan & Co., or any member thereof in reference to the purchase of this 306,000 shares of stock?

Mr. Walters: Yes, sir.

Mr. Young: Are they in existence?

Mr. Walters: Yes, sir.

Mr. Young: I will ask you to file them.

Mr. Walters: You already have a copy, I think, but we will be glad to file another.

Mr. Young: Is that the only one?

Mr. Walters: You have every paper that passed between J. P. Morgan & Co., and any officer of the Atlantic Coast Line Railroad Company or the Atlantic Coast Line Company except one dated December 1. I do not think you have that. That was in connection with raising ten millions of money. That was a temporary agreement under which they agreed to form a syndicate to under-

write, but I am glad to say our own stockholders took all the stock and that syndicate is dissolved.

Mr. Young: There was no stock to buy except that 8,500,000?

Mr. Walters: Yes, sir; and it was all taken by our own stockholders.

Mr. Young: Of the Atlantic Coast Line Railroad Company?

Mr. Walters: Yes, sir; one of which is the Atlantic Coast Line Company. The Atlantic Coast Line Railroad Company offered its own stockholders $8,500,000 of stock at 125 to raise the $10,000,000 of cash to pay in part payment for the Louisville & Nashville stock and the railroad stockholders subscribed for all that.

Mr. Young: Where did you get the cash with which you made the cash payment?

Mr. Walters: That is what I am explaining.

Mr. Young: It came from the sale of the stock?

Mr. Walters: To our own stockholders, yes sir.

Mr. Young: How much cash did you pay?

Mr. Walters: Ten million dollars; $8,500,000 at 125, which is about $10,600,000 and something.

Mr. Young: I understand Mr. Erwin to say that there was an additional payment of cash and bonds.

Mr. Walters: The payment was thirty-five mlilions in bonds, ten millions in cash and five millions in stock.

Mr. Young: Morgan & Company got five millions of stock at the Atlantic Coast Line Company?

Mr. Walters: Yes, sir; so far as we know, they did.

Mr. Young: Which was delivered to them?

Mr. Walters: Yes, sir.

Mr. Young: And thirty-five millions of bonds?

Mr. Walters: Yes, sir.

Mr. Baxter: You mean the Atlantic Coast Line Railroad Company?

Mr. Walters: Yes, sir.

Mr. Young: Is it or is it not true that J. P. Morgan & Company sent out the written proposition in regard to the sale of this stock to the stockholders of the Atlantic Coast Line Railroad Company?

Mr. Walters: Mr. Elliott can tell you about that. That part of the negotiations he engineered.

Mr. Young: Had you ever had any communication with any-

body representing the Southern Railroad Company before you came home from Europe?

Mr. Walters: I had not. I was in Rome. I have heard since—the Southern Railway?

Mr. Young: Yes, sir.

Mr. Walters: No, sir. I was simply going to say, I understand, a member of the firm of J. P. Morgan & Co., sent me a telegram, but I never got it.

Mr. Young: Was there ever at any time any discussion during the negotiations that led up to the sale of this stock of the railway of the relations existing between the Atlantic Coast Line Railroad Company and the Southern Railway?

Mr. Walters: Yes, sir; we discussed questions of that kind.

Mr. Young: Was there any discussion as to the relations that these companies did, or would in future bear to each other?

Mr. Walters: There were some questions of that kind discussed.

Mr. Young: Tell what they were?

Mr. Walters: I could not do that. It was a very indefinite matter. There were no agreements, no understandings, nothing at all beyond the actual purchase of the stock.

Mr. Young: Was there not some discussion between you gentlemen as to the fact that by the control of those properties of the Louisville & Nashville Railroad, placed with the Atlantic Coast Line Company, or the Atlantic Coast Line Railroad Company, that harmonious relations would be brought about and maintained between the Southern Railway Company and those two companies.

Mr. Walters: No such conditions.

Mr. Young: I am not talking about conditions. Were there not discussions along that line? Suggestions?

Mr. Walters: I am glad to say that our relations with the Southern Railway have always been of a friendly character and I presume that matter was referred to; indeed, I am sure it was, but that is all, no agreement, no understanding, no contract direct or indirect or inferred or anything else exists or did exist at any time during the negotiations.

Mr. Young: What relation has Mr. J. P. Morgan to the Atlantic Coast Line Company?

Mr. Walters: He has no relations.

Mr. Young: Is he not a director?

Mr. Walters: No, sir.

Mr. Young: Is there a voting trust in the Atlantic Coast Line Company?

Mr. Walters: No, sir.

Mr. Young: Any pool of stock?

Mr. Walters: No, sir.

Mr. Young: Who owns that stock?

Mr. Walters: It is owned by practically three persons, a majority of it.

Mr. Young: Who are they?

Mr. Walters: Michael Jenkins and his family, Mr. Newcomer and his family and myself.

Mr. Young: Has any member of J. P. Morgan and Company any stock in the Atlantic Coast Line Company.

Mr. Walters: No, sir.

Mr. Young: Did they ever have any?

Mr. Walters: Not to my knowledge.

M. Young: Is Mr. J. P. Morgan a director in the Atlantic Coast Line Railroad Company?

Mr. Walters: He never had any connection with ony of our properties.

Mr. Young: Is any member of his firm a director?

Mr. Walters: No, sir.

Mr. Young: During this negotiation, with whom did these suggestions come up concerning the friendly relations of the Southern Railway and these other two companies, the Atlantic Coast Line Company and the Atlantic Coast Line Railroad Company.

Mr. Walters: The greater part of everything said in connection with that, as I recall, was with Mr. Steele in the start, and it was only in a most desultory manner and as at that time I was quite anxious to be successful in purchasing the stock, I talked a little freely with him on that subject but made no promises of any kind, nor did he ask me to make any.

Mr. Young: In that discussion did you not in the most thorough way that one gentleman could assure another assure him that the result of the acquisition of the control of the Louisville & Nashville Railroad would produce harmony and co-operation, in so far as it was possible among railroads, between the Southern and that Company?

Mr. Walters: I did not, but I hope it will.

Mr. Young: What did you say? Tell us what Mr. Steele said and what you said.

Mr. Walters: I really can not recall it. It was in the most general way.

Mr. Young: Was that at the commencement of the negotiation?

Mr. Walters: Yes, sir; the first interview I had with Mr. Steele.

Mr. Young: Did you say to Mr Steele, or did Mr. Steele say it to you?

Mr. Walters: I think we both said it to each other.

Mr. Young: It was a mutual outburst.

Mr. Walters: That is right.

Mr. Young: Now, the Atlantic Coast Line Railroad Company is more or less a competitor of the Southern Railway Company, is it not?

Mr. Walters: Yes, sir; active.

Mr. Young: Through what States?

Mr. Walters: Virginia, North Carolina, South Carolina, Florida, Georgia and Alabama.

Mr. Young: Now, I will ask you this question: Under any ordinary conditions which regulate and control traffic, would you, as the representative of the Atlantic Coast Line Railroad Company and its properties, enter into any freight war or rate war with the Southern Railway Company?

Mr. Walters: I would indeed, certainly.

Mr. Young: You would

Mr. Walters: Certainly.

Mr. Young: Notwithstanding this suggestion that passed between you and Mr. Steele?

Mr. Walters: There is nothing of any kind exists that would prevent their inaugurating a freight war or our inaugurating a freight war.

Mr. Young: I know there is no agreement, but—

Mr. Walters: There is no understanding, implied, or otherwise.

Mr. Young: Was not that matter understood and mentioned in the very outset of negotiations for control of the Louisville & Nashville Railroad?

Mr. Walters: It was not.

Mr. Young: How long after that?

Mr. Walters: It never was.

Mr. Young: I understood you to say that both you and Mr. Steele almost simultaneously—

Mr. Walters: You said "understanding." There was no understanding at all.

Mr. Young: I say what I understand. Did not you say a moment ago that at the beginning of these negotiations you and Mr. Steele simultaneously discussed the relations of the Southern Railway Company and the Atlantic Coast Line Railroad Company?

Mr. Walters: Yes, sir; I said that.

Mr. Young: And that that matter was discussed before you went any length in negotiations for the sale of the 306,000 shares of Louisville & Nashville?

Mr. Walters: It was in connection with the first conversation we had on that subject.

Mr. Young: Were you at any time made acquainted with the legal conditions which prevented the acquisition of the Louisville & Nashville Railway by the Southern Railway Company?

Mr. Walters: Yes, sir.

Mr. Young: Who did you discuss that with?

Mr. Walters: With our counsel, Mr. Elliott.

Mr. Young: Did you ever discuss it with Mr. Steele?

Mr. Walters: No, sir.

Mr. Young: Did you ever discuss it with Mr. Perkins?

Mr. Walters: I think not.

Mr. Young: Did you ever discuss it with Mr. Morgan?

Mr. Walters: No, sir.

Mr. Young: Did you ever discuss it with anybody representing or connected with the firm of J. P. Morgan & Company?

Mr. Walters: No, sir; I never have.

Mr. Young: You were present at the meeting of the Board of Directors of the Atlantic Coast Line October 9, 1902?

Mr. Walters: I presume I was. I was present at all of those meetings.

Mr. Young: That was held in the city of New York. (Reading from paper). Warren G. Elliott, President, Mr. Walters, Mr. Newcomer, Mr. Scott.

Mr. Walters: Yes, sir; I was there.

Mr. Young: Did the President on that occasion make a written or mere oral statement of the conditions that lead up to the purchase of the stock of the Louisville & Nashville Railroad?

Mr. Walters: The statement was oral.

Mr. Young: Was that the meeting at which the resolutions were passed approving the purchase or approving the contract to purchase?

Mr. Walters: Yes, sir.

Mr. Young: Did the President at that time state the reasons that induced him to bring this matter before the board of directors and enter into the contract that he did enter into with Morgan & Company?

Mr. Walters: Yes, sir; it was stated at that meeting why that was.

Mr. Young: I notice in the printed minutes of that meeting that the minutes of the last meeting were read and approved. Did the minutes of the previous meeting have any thing to do with the purchase of the Louisville & Nashville Railroad?

Mr. Walters: Yes, sir. I think that was the first meeting at which it was discussed.

Mr. Young: You can find out and tell us?

Mr. Walters: Yes, sir. It was the first meeting absolutely.

Mr. Young: Was it at the first meeting of the Board of Directors of the Atlantic Coast Line Railroad Company after the matter was brought to their attention that this contract with J. P. Morgan & Company and the issue of securities was authorized?

Mr. Walters: The issue of securities was authorized at a later meeting at Richmond, on, I think, 17th of November.

Mr. Young: Well, there was a proposition from Morgan & Company dated September 27, which was accepted and referred to by Mr. Elliott in his communication?.

Mr. Walters: Yes. sir. We were obliged to have a stockholders meeting to authorize the issue of new securities and that could not be held until the date in November.

Mr. Young: In the letter which Mr. Morgan addressed to the Atlantic Coast Line Railroad Company, dated September 27, 1902, he goes on to say:

"We have in our possession certificates for said 306,000 shares (transferred on the books of the Louisville & Nashville Company to our nominee and representative) which certificate we hold under and upon the terms of two certain contracts, dated April 15, 1902, one with Harris, Gates & Co., and one with Hawley & Davis, of which two contracts we have handed you copies.

"On the faith of your offer and in reliance upon the due fulfillment thereof we shall communicate to the umpire under our said contracts and in pursuance of the provisions thereof a plan, of which we hand you a copy."

Have you copies of those contracts?

Mr. Walters: Our counsel has, I presume.

Mr. Young: You have no objection to filing them?

Mr. Walters: If we have them. I am not sure whether we have them or not.

Mr. Young: You can do it at your convenience.

Mr. Walters: I am inclined to think they were returned to J. P. Morgan & Co. I will see and let you know.

Mr. Young: If you have them you will file them?

Mr. Walters: We will with pleasure.

Mr. Young: In the letter of September 27, 1902, addressed to J. P. Morgan & Co. by Warren G. Elliott, President, he says:

"Referring to your communication of September 27, 1902, and to the copies of contracts and plan therein enclosed, we have to say that we confirm the arrangement therein set forth," etc.

What did the term "plan" there refer to?

Mr. Walters: I do not know.

Mr. Young: Was there no statement made about the plan?

Mr. Walters: I do not know unless I can read it.

Mr. Young: In this letter Mr. Elliott says:

"We confirm the arrangement therein set forth as a sufficient acceptance of our offer of September 25, 1902, and we will receive and in the manner and at the time stated in our said offer we will pay for said 306,000 shares of the L. & N. stock," etc.

Mr. Walters: It refers to that, to the terms.

Mr. Young: Can you give us a copy of that?

Mr. Walters: We have no other papers except the papers you have.

Mr. Young: We have never had those papers.

Mr. Walters: We will be very glad to give you a full set of those papers.

Mr. Young: Did you see anything of an agreement made by a syndicate, of which J. P. Morgan & Co. were the head or the promoters concerning the purchase of this 306,000 shares of Louisville & Nashville Railroad Stock?

Mr. Walters: That is the agreement referred to in there, which I say I think was returned to J. P. Morgan & Co.

Mr. Young: I think not, if you will permit me. There was some syndicate, as I am informed, that purchased this 306,000 shares of stock—did you ever see it?

Mr. Walters: No, sir; I am not familiar with it at all.

Mr. Young: You know nothing about it?

Mr. Walters: I know nothing about it.

Mr. Young: How came the Atlantic Coast Line Railroad Company to acquire the Plant System, Mr. Walters? Were you active in that negotiation?

Mr. Walters: Yes, sir.

Mr. Young. How did it acquire it?

Mr. Walters: It acquired it—Mr. Erwin explained to you. Do you mean the exchange of securities?

Mr. Young: Yes, sir.

Mr. Walters: There was a concern known as the Plant Investment Company which owned all the stock of the parent company.

Mr. Young: Of the four railroads?

Mr. Walters: Yes, sir; and we purchased all that stock.

Mr. Young: How was that paid for?

Mr. Walters: It was paid for in our own stock.

Mr. Young: You mean the railroad company's stock?

Mr. Walters: Yes, sir.

Mr. Young: The Atlantic Coast Line Railroad Company's stock?

Mr. Walters: Yes, sir.

Mr. Young: Did it issue stock for that purpose or did it have it in the treasury?

Mr. Walters: It did. It issued stock expressly for that purpose.

Mr. Young: On what terms did you trade?

Mr. Walters: Our stock at par for theirs at 60 about.

Mr. Young: How much stock did the Atlantic Coast Line Railroad Company issue for that purpose?

Mr. Walters: A fraction over seven millions.

Mr. Young: There were no collateral bounds issued?

Mr. Walters: They had an issue of $12,451,000 onds which we traded for. We bought those and issued our bonds in exchange for them.

Mr. Young: Were those bonds retired?

Mr. Walters: Yes, sir.

Mr. Young: We do not care to ask Mr. Walters anything further.

CROSS EXAMINATION.

Mr. Baxter: Mr. Walters, you were asked just now something about the meaning of the word "plan." I wish you would refer to the letter of J. P. Morgan & Co. to the Atlantic Coast Line Rail-

road Company, dated New York, September 27, 1902, and see if the fact is not that Morgan & Co. had made contracts with Harris, Gates & Co. and Hawley & Davis, under which Morgan & Co., were to acquire the Louisville & Nashville stock from those two firms; and if it was not also a part of the arrangement between Morgan & Co. and Hawley & Davis and Harris, Gates & Co. that Morgan & Co. was to submit to both those firms a plan for the disposition of that Louisville & Nashville stock which if acceptable, those firms would carry out and if not acceptable, Morgan & Co. were to take the stock and pay for it themselves, and if that is not what is meant by the word "plan?"

Mr. Walters: Yes, sir; that is the paper I understood these gentlemen desired us to file a copy of and which is referred to in this correspondence as having been submitted to us. Now, whether we kept those papers or returned them to J. P. Morgan & Co. I do not know.

Mr. Elliott: Mr. Walters, do you not remember that it was brought to your knowledge about the time of the closing of these negotiations that under the agreement which J. P. Morgan & Co. had with Hawley & Davis and the other firm that J. P. Morgan & Co. were by a certain date, say in October, to submit a plan to them as interested in this stock, by which they were to dispose of the stock of the Louisville & Nashville Railroad?

Mr. Walters: Yes, sir; that is all set out in that paper.

Mr. Elliott: Don't you remember that it came to your knowledge towards the close of this transaction that Morgan & Co. did submit to Hawley & Gates as the plan which they were under obligation to submit, the proposition that they should participate to the extent of their interest in the securities and money which was paid by the Atlantic Coast Line Railroad Company for the stock?

Mr. Walters: They were to have the option to do that if they chose.

Mr. Elliott: Don't you remember that that was the plan which came to your knowledge— that was the plan submitted to Hawley & Gates?

Mr. Walters: That was it.

Mr. Elliott: And that was a copy of the plan sent to us and which is referred to in that letter?

Mr. Walters: Yes, sir.

Mr. Baxter: In other words, the word "plan," referred to in your cross-examination had no reference to any plan that J. P.

Morgan & Co. or anybody else had gotten up for the management of the Louisville & Nashville by the Atlantic Coast Line Railroad Company?

Mr. Walters: No, sir; none whatever. Every agreement of every kind or description, implied or otherwise is contained in those papers, copies of which were sent to the Commission.

Mr. Baxter: Now, independent of those papers, I wish you to state whether you have any knowledge, information or belief that there now exists or had at any time existed any fact, contract, agreement or understanding, express or implied, oral or written, by which the Atlantic Coast Line Railroad Company, the Southern Railway Company and the Louisville & Nashville Railroad Company are to be operated together or in harmony under any community of control or management whatsoever?

Mr. Walters: No, sir.

Mr. Baxter: That is all.

Com'r Prouty: Under the laws of what States is the Atlantic Coast Line Company organized?

Mr. Walters: Connecticut.

Com'r Prouty: What is the authorized capital stock?

Mr. Walters: Thirty millions.

Com'r Prouty: What is the present issue?

Mr. Walters: Ten millions.

Com'r Prouty: Has there been any recent effort to increase or obtain authority to increase the capital stock of that company?

Mr. Walters: No, sir.

Com'r Clements: What was the increased capital stock?

Mr. Walters: Thirteen millions five hundred thousand.

Com'r Clements: That was the increase of what?

Mr. Walters: Of stock.

Com'r Clements: Of what company?

Mr. Walters: The Atlantic Coast Line Railroad Company. That is the $8,500,000 that the stockholders took and the $5,000,000 paid as part payment to J. P. Morgan & Co.

Com'r Clements: Was anything of either company retired in consequence of that, either bonds or stock?

Mr. Walters: No, sir; they acquired the $30,600,000, of stock of the Louisville & Nashville Railroad Company.

Com'r Clements: But no stock or bonds of any of those companies were retired in consequence of these transactions?

Mr. Walters: No, sir.

Com'r Clements: What was the market value of the stock of your Company when this new stock was issued?

Mr. Walters: The railroad stock, about 140.

Com'r Clements: And this eight millions was taken by the stockholders?

Mr. Walters: Yes, sir.

Com'r Clements: And not offered to the public?

Mr. Walters: No, sir.

Com'r Clements: And it was taken at 125?

Mr. Walters: At 125.

Com'r Prouty: Is the stock of the Atlantic Coast Line Railroad Company for sale on the market?

Mr. Walters: Very little, it is held so strongly. Those three interests I spoke of hold nearly three-fourths of it.

Com'r Prouty: Has any contract, agreement or undehstanding been made with Morgan & Co. or the Southern Railway or any other person looking to a transfer of that stock?

Mr. Walters: No, sir; none whatever.

Com'r Prouty: That is all.

The Chairman: If there are no further questions to be asked Mr. Walters, he will be excused.

The witness was excused.

W. G. ELLIOTT,

a witness on behalf of complainant, being duly sworn testified as follows:

Mr. Young: Mr. Elliott, what relations do you hold now to the Atlantic Coast Line Company?

Mr. Elliott: I am President of the Atlantic Coast Line Company. I am also the General Counsel of the Atlantic Coast Line Railroad Company as well as the Atlantic Coast Line Company.

Mr. Young: You live in Baltimore?

Mr. Elliott: I am in the act of moving there. That will be my headquarters in the future.

Mr. Young: Where did you live before?

Mr. Elliott: At Wilmington, North Carolina.

Mr. Young: Were you in any way instrumental in bringing about these negotiations between the Atlantic Coast Line Railroad Company and J. P. Morgan & Co. by which 306,000 shares of stock

of the Louisville & Nashville Railroad was acquired by that Company?

Mr. Elliott: I had no connection whatever with the transaction until the latter part of September, 1902. The preliminary negotiations, as has been explained by Mr. Walters, were carried on by him largely during my absence on my vacation when I was in the mountains. I was here in New York in the latter part of September and Mr. Walters advised me that transactions had progressed to that point that he had to call in my services to complete them.

Mr. Young: Were you then President of the Atlantic Coast Line Company?

Mr. Elliott: No, I was then President of the Atlantic Coast Line Railroad Company. These changes were made the 17th of November ot our annual meeting; Mr. Erwin became President of the Railroad Company and a day or two before that I was elected President of the Atlantic Coast Line Company in place of Mr. Walters who resigned. It was at that time the time these negotiations were going on and at the time they were closed—well in the closing part of them I was still President. The collateral trust deed was signed by Mr. Erwin as President. On the day he was made President there was a special meeting of the stockholders held to authorize the increase in stock which was necessary before the transaction could be completed.

Mr. Young: When you came into these transactions in New York, did you come into them as counsel or as President?

Mr. Elliott: Practically as counsel. While I have held for the last twelve years the position of President, I have always filled the position and performed the duties of general counsel.

Mr. Young: Who did you conduct negotiations with in regard to the purchase of this Louisville & Nashville Railroad stock?

Mr. Elliott: My first connection with any parties was an interview had between Mr. Stetson and Mr. George W. Perkins as to the arrangements for closing the purchase on the terms agreed upon in the preliminary transactions.

Mr. Young: Up to that time had all preliminary arrangements been made and the contract agreed upon?

Mr. Elliott: The preliminary arrangements had been made so the contract could be agreed upon.

Mr. Young: You met at that time for the purpose of preparing the contract?

Mr. Elliott: Yes, sir.

Mr. Young: And you came as both counsel and president to complete the negotiations?

Mr. Elliott: That is right.

Mr. Young: Did you have any conversation with these gentlemen in regard to the sale of this stock, the purpose for which your company bought it, or any understanding as to the conditions upon which it was to be bought by the Atlantic Coast Line Railroad Company?

Mr. Elliott: Which gentlemen do you mean?

Mr. Young: Mr. Stetson and Mr. Perkins.

Mr. Elliott: No, sir.

Mr. Young: That was not discussed between you then?

Mr. Elliott: No, sir.

Mr. Young: Then, in so far as any agreement or understanding, express or implied, in regard to this stock was had, it was with Mr. Walters and not with you?

Mr. Elliott: It was had with Mr. Walters and not with me. So far as my connection with the matter as President was concerned, my understanding was that the Atlantic Coast Line Railroad Company was buying this Louisville & Nashville Stock from J. P. Morgan & Co. just as you would go into a confectionery store and buy a pound of candy, and when they were ready to wrap it up and deliver it to us, we were ready to pay for it, and nobody else had anything to do with it.

Mr. Young: Did you buy this stock directly from Morgan & Co. or was there a syndicate used as an intermediary?

Mr. Elliott: In order that you gentlemen may understand all we knew about the transaction, in preparing the answer to your complaint in this case, I went out of my way to file as an exhibit a copy of the proceedings of our Board of Directors of October 9, at which the purchase of this stock by the Atlantic Coast Line Railroad Company was ratified and approved by that Board, subject, of course, to the action of the stockholders in authorizing the increase of stock that was necessary to complete the payment of our purchase price. If you read those proceedings you will find that in those proceedings there was set forth the entire transaction as it had taken place between Messrs. Morgan & Co. and our Company; that on the 25th of September, after we had agreed to purchase the stock and agreed upon the terms, as president of the Atlantic Coast Line Railroad Company, I submitted to Messrs. J. P. Morgan & Co. a written offer to take that stock if they were in po-

sition to deliver it to us on or before the 31st of December and to pay them $50,000,000 for it, for the 306,000 shares; $35,000,000 of that was to be paid in 4 per cent. fifty year collateral gold bonds of the Atlantic Coast Line Railroad Company which were to be secured by a deposit of the 306,000 shares of stock with the New York Security & Trust Company of New York as trustees. I went so far as to file a copy of that proposed collateral trust with the answer. I then filed copy of the answer of J. P. Morgan & Co. in which they advised us that they had the certificate in their possession for 306,000 shares of the Louisville & Nashville stock, that they were held by them subject to an agreement made with Hawley & Gates and Davis and somebody, copies of which they had furnished us. When we inspected those agreements we found that this stock had been deposited, a portion of it, with Morgan & Co. by these firms, upon the condition that Morgan & Co. were by a certain date—I think the 15th of October,—to submit to Hawley & Gates and the Davis firm a plan by which that 306,000 shares of Louisville & Nashville stock should be disposed of, Morgan & Co. owning a part and they owning a part. I mention this because the letter shows that they took the precaution to give formal notice by handing us copies of the contracts that existed between them and Hawley & Gates, and in their reply they said to us that they would submit the plan—they had formed a plan for taking the $50,000,000 in cash and securities—they would submit that to Hawley & Gates as the plan for the disposition of that stock. That is, they presented to Hawley & Gates the right to participate according to the extent of their interest in the securities and money paid by the Atlantic Coast Line Railroad Company for this stock. Those agreements provided that in the event that Hawley & Gates should declare the plan unsatisfactory that then they should have the right to purchase their interest in the stock for cash. We advised them that that was a sufficient acceptance to us, they having agreed that if the plans were not acceptable to Hawley & Gates and others, they would furnish the money and buy the stock. You will see that it was perfectly clear from the correspondence that passed between J. P. Morgan & Co. and ourselves that they were not the owners of the stock at that time. That is all set out in those proceedings. Their agreement with us was that if this plan which they were to submit as to the distribution of proceeds was not satisfactory to Hawley & Gates that they would pay for the stock. We have concealed nothing. You

will find in the letter of Morgan & Co. that they say to us, having formed a syndicate, we will take the stock and deliver it to you. Now, then, we had the agreement of Morgan & Co. to take that stock, dated in September—to take that stock and sell it to us by December 31. We then went ahead and prepared ourselves to pay for it by that time. We had a special meeting of the stockholders, which is required under the law to authorize the increase of the stock. That special meeting of the stockholders authorized us to increase the capital stock of the railway company to an extent not exceeding $15,000,000 for the purpose of completing this purchase. They first ratified the purchase and then authorized this increase and authorized the issue of the thirty-five million in bonds. Under the contract of purchase, as you will observe, we had to pay over five millions of that on account of the purchase to Morgan & Co. We then prepared the mortgage, had it executed, and in order to raise the $10,000,000 in cash, we offered to our own stockholders in the railroad company the right to take that increased stock at the rate of 40 per cent. pro rata. If a man had a hundred shares of railroad stock he could take 40 at 125. Every single share of that $8,500,000 was taken up by our stockholders at 125. They paid down 25 per cent. in cash and the balance was to be paid by February 15th. That is the way we got the $10,000,000 to provide the cash under that agreement. Having delivered the stock of five millions and bonds of thirty-five millions, we paid ten shillings from the result of the sale of the stock to our own stockholders. That is the whole transaction so far as I know it, and we undertook to put it plainly before you in our answer. Those proceedings of the special meetings of the stockholders I promised to have filed here. It is simply a ratification of what was done by the directors.

Mr. Young: You have not answered my question as to whether or not you ever saw a copy of any proposal issued by J. P. Morgan & Co. for the purpose of syndicating this stock or disposing of this stock or bonds?

Mr. Elliott: You forget you did not ask me that question. You asked Mr. Walters.

Mr. Young: I would like to have the question repeated.

The question was repeated by the Stenographer as follows:

"You have not answered my question as to whether or not you ever saw a copy of any proposal issued by J. P. Morgan & Co. for

the purpose of syndicating this stock or disposing of this stock or bonds?

Mr. Elliott: I do not remember to have ever seen any such proposal. I do not know whether I understand you fully. I understood you to ask Mr. Walters the question as to whether or not the proposal for the sale of this $8,500,000 in stock to the stockholders did not go out from J. P. Morgan & Co. I want to say that the proposition for the sale of that stock to the stockholders did not go out from J. P. Morgan & Co. It went out from our fiscal agent, The Safe Deposit and Trust Company of Baltimore. The whole transaction was in the name of the railroad company.

Mr. Young: Did you preserve copies of these agreements referred to in that letter of J. P. Morgan & Co. in regard to their relations with Hawley & Gates?

Mr. Elliott: It is altogether probable that I have those papers. I am not in the habit of throwing papers away. It is probable that Mr. Stetson handed me copies of those papers with that letter. If I have them, you are welcome to them. If I have not got them, I will get copies if it is possible. I do not know whether I will be able to do it. As I said, we have nothing on earth to conceal.

Mr. Young: Did you ever see a copy of the plan under which the 306,000 shares of stock of the Louisville & Nashville Railroad Company was acquired by J. P. Morgan & Co. and their associates?

Mr. Elliott: Well, the only copies I have ever seen were these contracts with Hawley & Gates and the other firm, Davis and somebody—which set forth the conditions upon which they deposited their stock with Morgan & Co.

Mr. Young: Do you know whether or not this 306,000 shares of stock was turned over to J. P. Morgan & Co. as representing themselves or as representing a syndicate who had acquired this 306,000 shares of stock?

Mr. Elliott: I do not know anything about that.

Mr. Young: I do not think we care to ask Mr. Elliott anything further.

CROSS EXAMINATION.

Mr. Baxter: I have one question, Mr. Elliott. Independent of or in connection with the papers which have been mentioned in your original examination, I wish you to state whether you have any knowledge, information or belief that there now exists or ever

has existed any contract, pact, understanding, or agreement, either express or implied, written or oral, that the Atlantic Coast Line Railroad Company, the Southern Railway Company and the Louisville & Nashville Railroad Company shall be managed in harmony under any kind of common control, community of interest or otherwise?

Mr. Elliott: I have not the slightest knowledge, and certainly no belief. I believe it is otherwise, that there is no such understanding.

Mr. Baxter: That is all.

The witness was excused.

J. PIERPONT MORGAN,

a witness on behalf of the complainant, being duly sworn, testified as follows:

Mr. Young: Mr. Morgan, you are the head of the firm of J. P. Morgan & Co.?

Mr. Morgan: I am, sir.

Mr. Young: How many members comprise that firm?

Mr. Morgan: I think about 10 or 12, sir.

Mr. Young: What had you to do, if anything, with the purchase of 306,000 shares of Louisville & Nashville Railroad stock, which was subsequntly sold to the Atlantic Coast Line Railroad Company?

Mr. Morgan: I was not here at the time. I simply consented to the contract being made.

Mr. Young: When did you return from abroad?

Mr. Morgan: About the middle of August.

Mr. Young: Had you known anything of this transaction before you arrived?

Mr. Morgan: I had.

Mr. Young: From whom?

Mr. Morgan: From my partners.

Mr. Young: Which one of your partners, or which two of your partners attended particularly to this matter?

Mr. Morgan: Mr. Perkins and Mr. Steele.

Mr. Young: So far as you know, did any other member of your firm have anything to do with this transaction?

Mr. Morgan: That I can not tell.

Mr. Young: I say, so far as you know.

Mr. Morgan: I do not know anything about it.

Mr. Young: You do know that they had something to do with it?

Mr. Morgan: I assume they did. They were the only ones here.

Mr. Young: Were you consulted after your return home?

Mr. Morgan: Yes, sir.

Mr. Young: By whom?

Mr. Morgan: By my partners.

Mr. Young: Did you come in contact with any of the Atlantic Coast Line Railroad people or any of the Atlantic Coast Line people in regard to this transaction?

Mr. Morgan: Between that time and this?

Mr. Young: Yes, sir.

Mr. Morgan: I have.

Mr. Young: I mean between that time and the delivery of the 306,000 shares of the stock of the Louisville & Nashville Railroad Company?

Mr. Morgan: To the Atlantic Coast Line?

Mr. Young: Yes, sir.

Mr. Morgan: I did.

Mr. Young: Who did you come in contact with?

Mr. Morgan: I do not remember—Mr. Walters and Mr. Erwin, and Mr. Elliott and Mr. Jenkins.

Mr. Young: You are one of the voting trustees of the stock of the Southern Railway Company, are you not?

Mr. Morgan: I am.

Mr. Young: How long have you been so?

Mr. Morgan: Ever since its formation.

Mr. Young: That is to continue five years from October, 1902, is it not?

Mr. Morgan: I do not remember. I have not the dates in my mind. I think it continues for ever unless the voting trustees terminate it.

Mr. Young: Do you know anything about a circular which was issued by you and your co-trustees—issued by J. Pierpont Morgan, Charles Lanier and Geo. F. Baker, dated August 27, 1902?

Mr. Morgan: I do.

Mr. Young: In regard to the stock of the Southern Railway Company, common and preferred?

Mr. Morgan: In regard to the voting trust?

Mr. Young: Yes, sir.

Mr. Morgan: Yes, sir.

Mr. Young: Did you issue that or cause it to be issued?

Mr. Morgan: I must have done so. It is signed by me, I think.

Mr. Young: It is printed.

Mr. Morgan: It would not have been allowed to go out otherwise.

Mr. Young: Did you confer with Mr. Gates at any time about the sale of this Louisville & Nashville Railroad stock to the Atlantic Coast Line Railroad Company?

Mr. Morgan: What do you mean by "consult with?"

Mr. Young: Confer with him?

Mr. Morgan: Not that I remember.

Mr. Young: Do you know whether any member of your firm conferred with him or not?

Mr. Morgan: I assume they did. They—

Mr. Young: I am asking for your knowledge.

Mr. Morgan: I do not know. I said I was not here.

Mr. Young: Are you a director in the Southern Railway Company?

Mr. Morgan: I am not.

Mr. Young: Have you ever been?

Mr. Morgan: Never.

Mr. Young: What member of your firm is a director?

Mr. Morgan: Mr. Steele, I think, is a member. I do not remember whether any other one is a member or not.

Mr. Young: Do you know anything about the transactions connected with the purchase of securities and the reorganization of what is known as the Louisville, St. Louis & Evansville Air Line Company?

Mr. Morgan: I do not remember anything about it.

Mr. Young: If your firm had anything to do with that transaction, do you know which member of your firm conducted the negotiations?

Mr. Morgan: I do not remember any such negotiations.

Mr. Young: Do you remember nothing that your firm had to do with the Louisville, Evansville & St. Louis Railway Company?

Mr. Morgan: No, sir.

Mr. Young: You know nothing about your firm having any connection with the acquisition by the Southern of the Louisville, Evansville & St. Louis Air Line?

Mr. Morgan: I do not remember anything about it now. If it is any transaction of the Southern Railway, we probably did, but I do not remember anything about it.

Mr. Young: Do you know anything about the purchase by the Southern Railway Company of stock in the Chicago, Indianapolis & Louisville Railway Company, known as the Monon Company?

Mr. Morgan: That I know about, yes, sir.

Mr. Young: What did you have to do with that?

Mr. Morgan: Nothing.

Mr. Young: What member of your firm conducted the negotiations, if there were any?

Mr. Morgan: I do not remember. I was not here at the time.

Mr. Young: Where were you at the time?

Mr. Morgan: I was in Europe.

Mr. Young: Do you know anything about any connection of your firm with the acquisition by the Southern of what is known as the Louisville Southern, now known as the Southern Railway in Kentucky?

Mr. Morgan: No, sir.

Mr. Young: Do you know anything of any connection of your firm with the acquisition by the Southern Railway Company of the Southern Railway in Indiana?

Mr. Morgan: No, sir.

Mr. Young: I will get you to file with the Commission, if you please, the advertisement or circular issued by you and your co-trustees, dated August 27, 1902. I have one. I suppose you can get one and file it with the Commission.

Mr. Stetson: If you will give me a list of the papers you want, I will get them.

(The circular is hereto annexed and marked "Exhibit No. 1, to Mr. Morgan's Testimony.")

Mr. Young: I will read to you a sentence from this circular and ask you to explain to the Commsision what you meant by the sentence I will read. This is signed by you and your co-trustees.

"Therefore we do not hesitate to state that, in our opinion, it is decidedly for the interests of the stockholders of the Southern Railway to protect their property by an extension of the voting trust until negotiations now pending for the further development and strengthening of its lines shall be settled beyond any risk of being overturned, and until the completion of other negotiations now pending in relation to transportation interests in the southern

States which have an important bearing upon the interests of the Southern Railway Company. It is scarcely necessary for us to state that in bringing this matter to the attention of the stockholders we have no desire to ourselves continue the responsibilities of the last eight years; at the same time we have felt that under the circumstances it was our duty to make this statement, leaving it to the stockholders themselves, however, with full knowledge of all the circumstances, to determine what shall be done."

Now, please tell us what you meant in the first place by these words:

"Until negotiations now pending for the further development and strengthening of its lines shall be settled beyond any risk of being overturned."

The Chairman: Pardon me a moment. Is that circular dated?

Mr. Young: Yes, sir; I gave the date, August 27, 1902. I will ask you, Mr. Morgan, to explain to the Commission what you meant by those words?

Mr. Morgan: Just what they say.

Mr. Young: What were they?

Mr. Morgan: I have not a copy. I would repeat what they say there—whatever is said there.

Mr. Young: I will get you to state what that referred to. You must have had some idea in using this language:

"Until negotiations now pending for the further development and strengthening of its lines shall be settled beyond any risk of being overturned."

What did that refer to?

Mr. Morgan: Nothing in particular.

Mr. Young: Did you put it in for amusement?

Mr. Morgan: No, sir.

Mr. Young: What did you put it in for?

Mr. Morgan: Because I knew the system was not complete and that other negotiations would be necessary.

Mr. Young: What was about to overturn this system?

Mr. Morgan: By somebody buying up the stock, as they did the Louisville & Nashville, and knocking it into a cocked hat.

Mr. Young: What did this refer to:

"And until the completion of other negotiations now pending in relation to transportation interests in the southern States which have an important bearing upon the interests of the Southern Railway Company."

Mr. Morgan: It referred among other things to the Louisville & Nashville sale.

Mr. Young: Did it not have some reference to the place where this Louisville & Nashville Railroad stock was to be finally landed?

Mr. Morgan: It was very desirable that we should know it.

Mr. Young: Did not that language used by you in this circular have reference to negotiations then pending for placing the 306,000 shares of the stock of the Louisville & Nashville Railroad?

Mr. Morgan: I say, that was included in that remark.

Mr. Young: You considered it important that the stock of the Southern Railway Co. should be held together until these negotiations were completed for placing the stock of the Louisville & Nashville Railroad in some place where the stockholders of the Southern Railway would consider it not inimical to their interests?

Mr. Morgan: No.

Mr. Young: Explain what they did refer to. What purpose did you have in mind?

Mr. Morgan: At that time we did not know to whom the Louisville & Nashville stock would go.

Mr. Young: Did you not have it practically under control at that time?

Mr. Morgan: No, sir.

Mr. Young: When did you get your option from Gates and Harris or the other gentleman?

Mr. Morgan: In the spring of 1902.

Mr. Stetson: April 15th.

Mr. Young: This is dated August. You did know where the stock was at that time?

Mr. Morgan: I did not say that I did not know where it was then. I said I did not know where it was going.

Mr. Young: You knew you had it.

Mr. Morgan: Yes, sir.

Mr. Young: And you knew you were going to sell it.

Mr. Morgan: We wanted to sell it, but we did not know who would buy it.

Mr. Young: You were offering it in the market?

Mr. Morgan: I was not offering it at all.

Mr. Young: Did you let anybody know that you wanted to sell?

Mr. Morgan: Everybody knew that. It was printed in the newspapers. Everybody knew it was for sale.

Mr. Young: Did you make any publication of the fact that the 306,000 shares of stock you control were for sale?

Mr. Morgan: It was published in the papers at the time.

Mr. Young: How?

Mr. Morgan: By the publishing of the terms of the contract with Mr. Gates.

Mr. Young: When was that first made public?

Mr. Morgan: In April.

Mr. Young: It was published?

Mr. Morgan: It was.

Mr. Young: In the newspapers?

Mr. Morgan: In the newspapers.

Mr. Young: The agreement between you and Mr. Gates & Co?

Mr. Morgan: Practically; yes, sir.

Mr. Young: Will you kindly tell us, if you can, what this means—

Mr. Morgan: I would like to say there, if I might explain, you ask me why we thought the Southern Railway stock was desirable that it should be retained until after the Louisville & Nashville had become settled some way or other. Suppose we had sold it to Mr. Walters. I did not know but what Mr. Walters might turn in and buy up the Southern stock to the detriment of the interests of the Southern stockholders.

Mr. Young: Did you consider the purchase of the stock of the Louisville & Nashville Railroad detrimental to the interests of the stockholders?

Mr. Morgan: No. I did not know what would happen. It would be decidedly unfortunate if the Louisville & Nashville stock was returned to Mr. Gates.

Mr. Young: Why?

Mr. Morgan: Because he has nothing to do with the management of the railroad. He represented a stock exchange pool, who were operating in stocks. They went in to buy this stock. They were not looking after the transportation interests of the South in any way, shape or manner. They were looking after the profit of the transaction itself.

Mr. Young: How could that affect the Southern?

Mr. Morgan: Nobody knew what they would do with it.

Mr. Young: In other words, they were a dangerous element in the railway world?

Mr. Morgan: Yes, sir.

Mr. Young: And you thought it best to take this stock and place it in safe hands to the railway interests of the South?

Mr. Morgan: Yes, sir.

Mr. Young: And that induced you to buy the 306,000 shares of stock?

Mr. Morgan: I did not buy it.

Mr. Young: Well, control it.

Mr. Morgan: We held it for their benefit.

Mr. Young: Did you own it or control it for others when you sold it?

Mr. Morgan: We controlled it for others.

Mr. Young: Did the firm of J. P. Morgan & Company own any part of that 306,000 shares?

Mr. Morgan. They own part of the 1-3 that was taken originally by the syndicate that was formed. If yoo will allow me to tell you the story, I will.

Mr. Young: Very well.

Mr. Morgan: We found out one morning that in all probability Mr. Gates had obtained control of the stock of the Louisville & Nashville Railroad. The company had 50,000 shares of additional stock to sell. The Board of Directors of the Louisville & Nashville Railroad Company ordered that stock sold, and the stock was sold. They overlooked the fact that they could not deliver the stock for 30 days after it was authorized and notice of it given to the stock exchange—it could not be listed, and consequently they could not deliver the 50,000 shares of stock that they had sold. That was another complication which had a most serious effect on all financial interests in the city. J. P. Morgan & Co, were then asked to endeavor if possible to adjust the matter.

Mr. Young: Who asked you?

Mr. Morgan: I do not remember who the parties were—people who came in suggested that all interests required that the matter should be adjusted, and as they were very apt to do, they came to J. P. Morgan & Co. to see if they could settle it for them. Then we went in to ascertain the facts, and were informed as to the amount of stock they had bought and found that the facts were in accordance with the rumors.

Mr. Young: That they had a majority?

Mr. Morgan: That they had 306,000 shares of stock, and more. Then, we went to work to negotiate with Mr. Gates and this negotiation was made.

Mr. Young: Who made that negotiation?

Mr. Morgan: J. P. Morgan & Co.

Mr. Young: I mean which member of your firm. Did you do it yourself?

Mr. Morgan: I do not know as to who made it. I was in Europe at the time and consequently could not make it. J. P. Morgan & Co. made it. That ought to be sufficient. I do not think it ought to be necessary to tell who did this, and who did that. I am telling you the facts of the case. If you allow me to tell the facts I will tell you the truth. J. P. Morgan & Co. went to work, in order to relieve the corner in the Louisville & Nashville stock—the Louisville & Nashville could not deliver the 50,000 shares they had sold—and the stock might be put up to the same price that Northern Pacific had been put up in the year before. It was the experience of the year before in Northern Pacific that made the people aware of the danger owing to the market being short of this stock, and it was for that purpose the thing was undertaken. Then, this arrangement was made with Mr. Gates. He had 306,000 shares.

Mr. Stetson: These agreements are all here.

Mr. Morgan: I have no objection to putting them in. If you want the facts we will give them to you. We finally made this arrangement with Mr. Gates and others interested with him that he was to deposit for his own account and his associates with us 204,000 shares; he was to deliver to us 102,000 shares. That made 306,000. The 102,000 we were to buy from him at 120 and the other part we were to give him receipts for; but the understanding was that if we could not make a satisfactory negotiation, to place the Louisville & Nashville in safe hands before the 15th of October, we were to give him back the stock we had bought at 120, so he would still have the 306,000 shares. We had the option of taking from him his 204,000 shares and with other parties held 102,000 but we did not own it, because if we did not make a satisfactory disposition of the 306,000, we had to give it back at what we paid for it.

Mr. Stetson: If he asked for it?

Mr. Morgan: If he asked for it. That is the way that matter stood; consequently you will see that the stock was not in our hands. We did not own the stock at the time we made the transaction. We will file those contracts.

Mr. Young: Now, Mr. Morgan, were there at any time any extensions of the Southern Railway contemplated?

Mr. Morgan: I do not know. I was not a director of the Southern—had nothing to do with it.

Mr. Young: You were a voting trustee?

Mr. Morgan: If the Board of Directors did not do as we thought ought to be done at the next election we would put them out.

Mr. Young: And put in somebody that would do what you thought was right?

Mr. Morgan: Yes, sir; or for the interest of the company.

Mr. Young: (reading from circular of August 27, 1902.)

"Therefore we do not hesitate to state that, in our opinion, it is decidedly for the interest of the stockholders of the Southern Railway to protect their property by an extension of the voting trust until negotiations now pending for the further development and strengthening of its lines shall be settled beyond any risk of being overturned."

Now, what had that to do with it?

Mr. Morgan: I have already answered that question once. I said that I knew the system was not complete and that until it was complete I did not propose, if I could avoid it, to turn it over to the stockholders.

Mr. Young: What part was incomplete?

Mr. Morgan. Various parts. I could not tell you what part.

Mr. Young: Who wrote that circular?

Mr. Morgan: I could not tell you. That is a difficult matter to say. A good many people wrote it.

Mr. Young: Did you have anything to do with it?

Mr. Morgan: I think it very likely.

Mr. Young: What part of it did you write?

Mr. Morgan: I do not know. It is hard to pick it out. I am willing to assume the whole responsibility.

Mr. Young: What I want is for you—

Mr. Morgan: The detail of it I am not responsible for.

Mr. Young: Who attended to the detail?

Mr. Morgan: Mr. Spencer, I suppose. He was president of the company.

Mr. Young: He is not a voting trustee?

Mr. Morgan: No, sir; but if he tells me a thing is so, I assume it is the same as if I knew it.

Mr. Young: What matters at that time had an important bearing upon the interests of the Southern Railway in regard to transportation?

Mr. Morgan: That is what I explained. I do not remember one. I gave as an illustration the Louisville & Nashville Railroad Company.

Mr. Young: Was it not almost altogether the Louisville & Nashville Railroad Company to which you referred in this circular?

Mr. Morgan: It was not.

Mr. Young: What other road was involved?

Mr. Morgan: Various things were wanted to complete the system. I have answered that three times.

Mr. Young: I am trying to get at the facts.

Mr. Morgan: I am telling you exactly the facts.

Mr. Young: I want to know what certain words mean.

Mr. Morgan: I tell you I can not tell you the details of it.

Mr. Young: Who can?

Mr. Morgan: I suppose Mr. Spencer can. I do not know.

Mr. Young: Is it not true that at the time you issued this circular there was an impending difficulty about the management of the Louisville & Nashville Railroad, which, as a voting trustee of the Southern Railway, you feared might affect the transportation interests in the South?

Mr. Morgan: I did not know anything about the management of the Louisville & Nashville Railroad.

Mr. Young: 306,000 shares at election of the Louisville & Nashville would change its control, would it not?

Mr. Morgan: It would at the next election. It would or could.

Mr. Young: Did you have anything to do with the selection of the directors of the Louisville & Nashville Railroad at its last annual meeting?

Mr. Morgan. No, sir; I had nothing to do with it. I even do not know who they are.

Mr. Young: Why did you fear the influence of the ownership of the Louisville & Nashville Railroad by Gates' control or Gates & Harris?

Mr. Morgan: I do not wish to impugn any man's ability, but I did not consider that Mr. Gates was a proper person to manage the Louisville & Nashville Railroad.

Mr. Young: Did you not then have in your mind the idea that the management through Gates and his associates might disturb

the railway conditions that then existed in the territory reached by the Southern Railway Company?

Mr. Morgan: In the Southern States, I did.

Mr. Young: And that was why you went into this plan, or formulated his plan for the purpose of disposing of that 306,000 shares and putting it somewhere you considered safe?

Mr. Morgan: Safe, yes, sir; that is the idea.

Mr. Young: Will you kindly explain to us why you considered the sale to the Atlantic Coast Line Railroad Company making it safe?

Mr. Morgan. I had confidence in Mr. Walters' management.

Mr. Young: Any other reason?

Mr. Morgan: No other whatever.

Mr. Young: Well, at that time Mr. Walters was not president.

Mr. Morgan: Well, Mr. Erwin. When I say Mr. Walters—

Mr. Young: You mean also his associates?

Mr. Morgan. I mean Mr. Walters and his associates.

Mr. Young: You felt that if this 306,000 shares of stock was placed with the Atlantic Coast Line Railroad Company, it would not be a disturbing element in railroad affairs in the South?

Mr. Morgan: I did exactly.

Mr. Young: That is why it was sold?

Mr. Morgan: That is why it was sold.

Mr. Young: If you thought it could have become a disturbing element in the railway situation in the South, you would not have sold it to the Atlantic Coast Line Railroad Company, would you?

Mr. Morgan: Not if I could avoid it.

Mr. Young: You could have avoided it?

Mr. Morgan: I could have returned it to Gates & Co. I was not looking for that. I was not going to buy a controlling interest in the Louisville & Nashville. I was looking for a buyer. The trflouble was, if I could not find somebody that would buy it safely, I had to give it back to Mr. Gates.

Mr. Young: You never had any idea of returning it to Mr. Gates.

Mr. Morgan: I came very near doing it.

Mr. Young: Would you not exercise the option and take it yourself?

Mr. Morgan: No, sir.

Mr. Young: You would let it go to pieces?

Mr. Morgan: If the people in the South could not place that

property where their territory would not be injured, when they had full notice of what I was about, I thought that my moral responsibility was at an end.

Mr. Young: How did you think Gates & Co. would injure the railway situation in the South?

Mr. Morgan: I could not tell you. That is my opinion.

Mr. Young: Did you feel that they would demoralize rates?

Mr. Morgan: I did not know what they would do. I knew they had no experience in managing railroads, and I did not think it was proper to put it into their hands.

Mr. Young: Do you remember whether or not after you secured the option on the stock of Harris, Gates & Co. and Hawley & Davis you issued any proposal or statement by which you thought to induce people to become interested in this matter of the acquisition of this stock?

Mr. Morgan: In what way?

Mr. Young: In purchasing this stock that belonged to Harris, Gates & Co. and Hawley & Davis. I mean, did you seek to get a number of gentlemen to unite with you or your firm in the purchase of this stock of Harris, Gates & Co. and Hawley and Davis?

Mr. Morgan: To buy this stock itself?

Mr. Young: Yes, sir.

Mr. Morgan: No, sir.

Mr. Young: Who negotiated these transactions with Gates & Harris and Davis & Hawley?

Mr. Morgan: J. P. Morgan & Co.

Mr. Young: You are not able now to state what member of your firm?

Mr. Morgan: That I do not remember.

Mr. Young: When did you go away that spring?

Mr. Morgan: The last of March.

Mr. Young: When did you return?

Mr. Morgan: I have answered that already, once.

Mr. Young: I have forgotten it.

Mr. Morgan: The 20th of August.

Mr. Young: I have never before been able to see this agreement. If the commission will indulge me a moment I will look it over.

Mr. Stetson: You have not asked for it.

Mr. Young: Was there ever at any time any agreement made

between you and any other people in regard to taking over this stock of Gates & Harris and Hawley & Davis?

Mr. Morgan: In what way?

Mr. Young: In regard to its acquisition or purchase or control and its disposition?

Mr. Morgan: Not that I know of.

Mr. Young: Was there not some circular issued by your firm and sent out to the stockholders and those interested in the Louisville and Nashville Railroad in regard to the control or disposition of this stock?

Mr. Morgan: Not that I know of.

Mr. Young: Now, Mr. Morgan, I call your attention to a letter written by your firm to the Atlantic coast Line Railroad Company, dated New York, September 27, 1902, in which you use these words —I will read the whole paragraph so that you can catch the connection:

"On the faith of your offer and in reliance upon the due fullfillment thereof we shall communicate to the umpire under our said contracts, and in pursuance of the provisions thereof, a plan of which we hand you a copy. In case such plans shall be declared unacceptable, having formed a syndicate, we will provide the money necessary for the cash purchase of said shares, and whenever we are entitled so to do we will transfer and deliver to you the said 306,000 shares upon the terms of your offer, which we thus accept."

Now, having formed that syndicate, who did you form it with? Who was in the syndicate?

Mr. Morgan: I do not remember. I have not the papers here before me.

Mr. Young: Can you furnish us a copy of it?

Mr. Morgan: I do not know. I do not remember what syndicate that is.

Mr. Young: This is the syndicate referred to in that letter.

Mr. Morgan: The sale to the Atlantic Coast Line was made. The offer they made was in bonds, stock and money. The terms of Mr. Gates and his associates were to pay them all money. You will appreciate the fact that that being the case, it became necessary to make a negotiation whereby the securities to be received of Mr. Walters should be taken over to pay the money to Mr. Gates. This syndicate was formed for that purpose.

Mr. Young: Is that the paper in your hand?

Mr. Morgan: This is the agreement.

Mr. Young: Will you file one with the Commission?

Mr. Morgan: You may have that one.

(The same is hereto annexed, and marked "Exhibit No. 2" to Mr. Morgan's testimony.)

Mr. Young: This was issued by your firm?

Mr. Morgan: Not issued. It is the syndicate agreement that was signed.

Mr. Young: It was issued to get people to sign. You wanted people to sign it?

Mr. Morgan: If they wished to.

Mr. Young: You offered them the opportunity?

Mr. Morgan: We did.

Mr. Young: Morgan & Co. issued it?

Mr. Morgan: I do not call it issuing it.

Mr. Young: You sent it out from your office; you distributed to the public?

Mr. Morgan: No, sir; we did not.

Mr. Young: You distributed it to people that you thought would buy?

Mr. Morgan: I tell you the truth. That is the paper. We had applications from people that knew the transaction was pending to secure interest in those securities from Mr. Walters, and Mr. Stetston prepared a paper for them to sign, and that is the paper prepared for them to sign at our office.

Mr. Young: They came after you to get in and this was the paper they were to sign when they got in?

Mr. Morgan: That is exactly the facts.

Mr. Young: In the distribution of this agreement prepared by Mr. Stetson and which people were seeking to sign, did not your firm send it out to a number of people and mark it "confidential?"

Mr. Morgan: That I do not remember. I do not think so.

Mr. Young: Do you know of any other paper executed in reference to this transaction of the acquisition and sale of this 306,000 shares of Louisville & Nashville stock?

Mr. Morgan: I refer you to Mr. Stetson.

Mr. Young: Mr. Stetson, have you any other papers?

Mr. Stetson: Yes, sir; there is the plan and notice given to Hawley & Davis and Harris & Gates, the plan called for under the original contracts and which they having declined it became neces-

sary for Morgan & Co. to let them have back 102,000 shares or raise the payment for 204,000 shares.

Mr. Young: That is all in reference to this particular disposition of the Louisville & Nashville stock? Are these all the agreements?

Mr. Stetson: All I have knowledge of except the syndicate agreement that Morgan & Co. made in the same form. It does not vary. If you wish that it is at your disposal. I do not suppose it has any relation to your transaction.

Mr. Young: I will have these filed.

(The same is hereto annexed and marked exhibits Nos. 3, 4, 5 and 6 to Mr. Morgan's testimony.)

Mr. Stetson: Let me make a brief statement that will clear this a little. There were 306,000 shares. Of the 306,000 shares one-third belonged to Hawley & Davis, 102,000 and two-thirds or 204,000 belonged to Harris & Gates.

Mr. Morgan: You are wrong: One-third belonged to J. P. Morgan & Co. Of the 306,000 shares, one-third belonged to J. P. Morgan & Co. and their associates.

Mr. Stetson: I am speaking of a date prior to that, while you were in Europe. Originally, before the sale Hawley & Davis and Harris & Gates together had 306,000 shares, of which Gates had a little more than two-thirds and Hawley had a little less than one-third.

Mr. Morgan: I said Hawley and Davis had practically one-third and Gates two-thirds of the whole.

Mr. Stetson: Of the half of the whole. This is anterior to your purchase. There were 306,000 shares, of which Hawley & Davis held a little over 100,000 and Gates a little over 200,000. They united in the sale or contract with J. P. Morgan & Co. With these conditions: Each contributed from his own a part, making up to J. P. Morgan & Co. 102,000 shares, presently purchased with a call back to them separately, and 204,000 shares that Morgan & Co. might take at their option. Therefore it involved duplicate contracts between Hawley & Davis and Harris & Gates. I am not giving you all these contracts, but they are all the same. You have one of each form there.

Mr. Young: Now, Mr. Morgan, what became of the securities that the Atlantic Coast Line Railroad Company delivered to J. P. Morgan & Co.

Mr. Morgan: We have not got them yet.

Mr. Young: I understood Mr. Erwin to say he delivered them. What became of them?

Mr. Morgan: They belonged to the syndicate.

Mr. Young: Who are the syndicate?

Mr Morgan: I just gave you the syndicate paper.

Mr. Young: This has no signature at all. It is a blank paper.

Mr. Morgan: I must decline to say—different people in the city that took an interest in the transaction.

Mr. Young: You have the original in your office?

Mr. Morgan: We have.

Mr Young: You now decline to give that information?

Mr. Morgan: I decline to give the private signatures of the parties who had no connection with it except to furnish the money we paid Mr. Gates.

Mr. Young: Have you any objection to stating how much money J. P. Morgan & Co. furnished?

Mr. Morgan: Not a great deal.

Mr. Young. Have you any objection to stating how much?

Mr. Morgan: I would if I knew, but I do not think it amounted to much.

Mr. Young: But a little with you may mean a great deal to other people.

Mr. Morgan: The point is, the application for participation were so great that we gave up nearly the whole in order to satisfy the applications, so far as we could.

Mr. Young: That was for the thirty-five millions of bonds?

Mr. Morgan: That was for the thirty-five millions of bonds.

Mr. Young: And five millions of stock?

Mr. Morgan: And ten millions of money and five thousand shares of stock.

Mr. Young: I do not think we care to ask Mr. Morgan anything else.

CROSS EXAMINATION.

Mr. Stetson: Mr. Morgan, I want to ask if this transaction, so far as you are concerned and so far as you know, involved or depended upon the purpose of any parties in any way to suppress competition between the Southern Railway and the Louisville & Nashville Railroad or any other railroad?

Mr. Morgan: In no way whatever.

Mr. Stetson: Or to affect rates?

Mr. Morgan: Or to affect a rate.

Mr. Stetson: Did the Southern Railway Company in any degree whatever have any interest in this syndicate?

Mr. Morgan: Directly or indirectly in no way whatever.

Mr. Stetson: Has the Southern Railway at any time ever in presence or potency had any connection in this transaction?

Mr. Morgan: None whatever—no more connection than there would be between the New York Central and a Florida railway company.

Mr. Stetson: Was this a transaction by you as a banker?

Mr. Morgan: Exactly.

Mr. Stetson: Exclusively a banker's transaction.

Mr. Morgan: Yes, sir.

Mr. Stetson: Buying in and out?

Mr. Morgan: That is all.

Mr. Stetson: Why do you have an interest as to where the ownership of the Louisville & Nashville is?

Mr. Morgan: That is a personal interest of mine, or the firm in regard to the maintenance of the situation throughout the country.

Mr. Stetson: The maintenance of the general business situation of the country?

Mr. Morgan: Yes, sir, that is all.

Mr. Stetson: The Louisville & Nashville is one of the most important instruments of commerce in the country is it not?

Mr. Morgan: It is.

Mr. Stetson: One of the most important institutions?

Mr. Morgan: It is.

Mr. Stetson: You would have been content for it to continue under the former management, would you not?

Mr. Morgan: Certainly.

Mr. Stetson: Did your interest arise solely when the majority of the stock became a subject of traffic in Wall Street?

Mr. Morgan: I had no interest whatever in it and have not now.

Mr. Stetson: Was that the first time you had any interest in your mind about the question of management?

Mr. Morgan: In years gone by we had more or less to do with it.

Mr. Stetson: Not since you were a voting trustee of the Southern?

Mr. Morgan: No, sir.

Mr. Stetson: Since then you never had any relations?

Mr. Morgan: Never.

Mr. Stetson: Were there any other matters entirely disassociated from the Louisville & Nashville which were pending with the Southern Railway to which reference is made in your circular?

Mr. Morgan: Yes, sir.

Mr. Stetson: Had that reference to the Louisville & Nashville—its acquisition or disposition?

Mr. Morgan: Yes, sir; because I did not propose that the Southern stock certificates should be given back to the stockholders and then Mr. Walters or Mr. Gates or anybody else should go in and buy it up until we know where the Louisville & Nashville was going.

Mr. Stetson: In other words, you wish to protect the stock of the Southern Railway against seizure by Mr. Walters or anybody else?

Mr. Morgan: Or anybody else.

Mr. Stetson: Among others, was there any question of the situation of the Southern Railway in Mississippi and the Mobile & Ohio?

Mr. Morgan: I do not know any thing about that. I never heard of it.

Mr. Stetson: You do not concern yourself with these questions of detail of the management of these roads, do you?

Mr. Morgan: I have already said that they are in the hand of the President and officers.

Mr. Stetson: You trust the board of directors and the officers?

Mr. Morgan: Naturally.

Mr. Stetson: I think that is all.

Mr. Baxter: Mr. Morgan, I will ask you, independent of the papers you have been examined in regard to, if you have any knowledge, information or belief of the existence of any combination or agreement or understanding expressed or implied written or oral, which has for its object the unification of the management of the Atlantic Coast Line Railroad Company, the Southern Railway Company and the Louisville & Nashville Railroad Company under a community of interest or in any other way?

Mr. Morgan: Neither under a community of interest or in any way I know of.

Mr. Baxter: That is all.

Mr. Young: I desire to ask Mr. Morgan another question in

view of the testimony brought out by Mr. Stetson. I understood you say to Mr. Stetson that your action in this matter was prompted first by your interest as a banker and, second, to preserve financial conditions in a safe and satisfactory way.

Mr. Morgan: That is so.

Mr. Young: If that was so, why did you issue this circular as voting trustee of the Southern Railway and not as J. P. Morgan & Co.

Mr. Morgan: J. P. Morgan & Co had nothing to do with it.

Mr. Young: A while ago you said that you were induced to this by its being a banker's transaction. If it were banker's transaction, why did you use your position as a voting trustee of the Southern and continue the trust of the Southern in order to effect a sale of the Louisville & Nashville Railroad stock?

Mr. Morgan: It had nothing to do with effecting a sale of the Louisville & Nashville railroad. What I said—I said it twice, what that circular referred to as to the voting trustee was to protect the stock of the Southern Railway Co. against being put in a position where it could be bought up, absorbed or controlled by any other line. The voting trustee or trustees had nothing whatever to do with the purchase sale, or anything to do with the Louisville & Nashville.

Mr. Stetson: As such?

Mr. Morgan: As such.

Mr. Young: I understood you a while ago in answer to my question in explanation of this paragraph I read to you to say—

Mr. Morgan: You ask me what negotiation I had in mind when that was written. I told you what I had in mind. It was a negotiation pending between J. P. Morgan & Co. and Gates and these people, but the voting trustees had nothing to do with it directly or indirectly, or the Southern Railway or any body connected with it.

Mr. Young: If it had nothing to do with it, why did you issue a circular as voting trustee about it?

Mr. Morgan: The voting trustee issued that circular because the time was imminent for the declaration of another five per cent. dividend on Southern preferred stock. If the directors in their wisdom saw fit to declare a dividend of two and a half per cent., the voting trustee would determine without power on their part to prevent it. The voting trustees deemed it desirable for the interest of the Southern Railway that the voting trust should remain

at least for two reasons, one of which was that the system was not yet consolidated in a manner satisfactory to the president or the voting trustees, so far as they knew anything about it—they did not know much—and also as a member of J. P. Morgan & Co. I knew that this negotiation was still pending and it was very uncertain at that time whether the Louisville & Nashville would go to the Atlantic Coast Line or back to Mr. Gates. That was another reason in addition to the reason I mention: while that negotiation was pending it was unwise for the stockholders to put the stock where it could be brought up by anybody over night.

Mr. Young: In issuing this circular you knew very little of the facts, but relied on Mr. Spencer and other officials of the Southern Railway as to what was best to be done?

Mr. Morgan: No, I do not concede that even to Mr. Spencer. I knew perfectly well that the road was not in the condition that it ought to be before it was turned over to the stockholders.

Mr. Young: Did you not say a moment ago in answer to an interrogatory, in undertones, that the voting trustees knew very little about it?

Mr. Morgan: About the details.

Mr. Young: And this statement was made therefore upon the facts furnished you by Mr. Spencer and other railroad gentlemen?

Mr. Morgan: Mr. Spencer, I do not think ever told me the facts as to what points, what connections or what lines he intended to buy, consolidate or build, but in general principles there were certain things—I do not remember now what they were—but I knew perfectly well then and know now, without knowing the details, that what Mr. Spencer said was true. That the line then and even now was not as complete as it ought to be before it was turned over to the stockholders. I do not mean turned over to the stockholders, because they can not manage it, but they have the certificates that they might sell and destroy the control of the property before it was completed.

Mr. Young: You did that then in the interest of the stockholders of the Southern Railway?

Mr. Morgan: Exclusively, without regard to any man, woman or child.

Mr. Young: You thought you could manage it better than the stockholders?

Mr. Morgan: I am not managing it. I said that the people

we voted for as directors of that road could manage the property better than Mr. Gates or any other class of men that might in a night seize that road and do what they pleased with it.

Mr. Young: You elected the trustees?

Mr. Morgan: I have nothing further to say on that. I have expressed my views and I think it ought to be satisfactory.

Mr. Young: Well, if you won't say anything more, we will stop right here.

Mr. Morgan: I will answer any question you care to ask me.

Mr. Young: That is all.

Commissioner Prouty: Mr. Morgan, did you make any attempt to sell the Louisville & Nashville to the Southern Road?

Mr. Morgan: No, sir.

Commissioner Prouty: Why did you not?

Mr. Morgan: Because they could not take it.

Commissioner Prouty: Why?

Mr. Morgan: They are parallel and competing lines. It would be illegal. At least it has been so held.

Commissioner Clements: Did your house hold any considerable stock in the Southern Railway?

Mr. Morgan: Yes, sir: a good deal.

Commissioner Clements: Does any one concern own as much as a majority of the stock?

Mr. Morgan: Oh, no, sir; it is all in the name of the voting trustees. As far as I knew, I do not think there is anybody that holds five per cent. of it. I do not believe there is anybody that owns five per cent.—even as much as that. Of course, there being no dividends paid on the common stock, the stock is not transferred. It might be held as a blind in the names of whoever it was issued to.

Commissioner Clements: That would not be known.

Mr. Morgan: Would not be known until it came to the time that there was a dividend or contested election or something of that kind.

The Chairman: So far as the books show the stock is distributed and there is no one stockholder having as much as five per cent?

Mr. Morgan: I do not think any stockholder has as much as two per cent. I have not the book here. I will submit if they

wish it a copy of the names in which it stands—the whole stock, if you wish it. Is that desired?

Mr. Young: No, we do not desire it.

The Chairman: Are there any further questions to be asked Mr. Morgan? If not he will be excused.

The witness was excused.

CHARLES STEELE,

a witness on behalf of the complainant, being duly sworn, testified as follows:

Mr. Young: Mr. Steele, you are a member of the firm of J. P. Morgan & Co.?

Mr. Steele: I am.

Mr. Young: How long have you been such member?

Mr. Steele: Two or three years.

Mr. Young: What part, if any did you have in the negotiations on the part of J. P. Morgan & Co. which resulted in the sale of 306,000 shares of Louisville & Nashville stock to the Atlantic Coast Line Railroad Company.

Mr. Steele: Well, I was in it all along, I do not know what particular part, but Mr. Perkins and myself practically conducted it together, and I think I am familiar with every step taken in it.

Mr. Young: Will you kindly tell us the first step taken?

Mr. Steele: The way it came up was, as Mr. Thomas has stated in connection with the fear on the stock exchange that a corner had been created in Louisville & Nashville stock. One of the members of the governing committee came to see me and said that owing to an oversight on the part of the Louisville and Nashville railroad when they authorized the sale in the market of some new stock that they had issued, some 50,000 shares, they had neglected to give notice to the stock exchange of the new stock, consequently under the rules of the stock exchange it could not be listed until thirty days had expired. They had sold the stock and been borrowing the stock from brokers on the street to make their deliveries, which, according to the rules of the exchange had to be made at once. They said that on this certain day there developed an indisposition on the part of the brokers from whom they had borrowed stock to lend it any further and that unless something was done they would have to go on the floor of the exchange and buy in the stock on the sale contract at any figure that anybody

chose to demand, and that would have created what is known as a corner. They asked me, as a member of the firm, if there was anything we could do to try to help out that situation. I took the matter up personally and in connection with a number of other gentlemen, members of the exchange, we saw Mr. Gates and some of his friends who had been buying the stock and persuaded them to continue to lend the stock so that there would be no corner created. That brought up the discussion with Mr. Gates as to what he really had, and it there developed that they had acquired something over 306,000 shares of this stock. It seemed to us an undesirable thing that that stock should be in such a position in the market, from the market point of view, and also that it was a threatening feature to the general commercial and railroad situation of the country to have the control of such a large corporation as the Louisville & Nashville bought up suddenly in the stock market and transferred—no one knew where. Of course, as you can well appreciate, the knowledge on the part of the public that a conservative management is in charge of a property tends to promote confidence generally in the business situation, and the knowledge that that control has been suddenly acquired and the ignorance as to where it is going to ultimately be deposited makes an uncertain and dangerous feeling—creates distrust all around. It was for that reason that we took up the negotiations with Mr. Gates and his friends to see if we could get some kind of contract with them by which the stock would not be disposed of without our having something to say about it and endeavored to see that it got into the hands of conservative people. That was the reason we started in. Then we made those contracts you have seen.

Mr. Young: You sought Mr. Gates, then, and Mr. Gates did not seek you?

Mr. Steele: In the first instance; yes, sir.

Mr. Young: He got more anxious afterwards to see you?

Mr. Steele: When I say that we sought him, perhaps that is not quite accurate. It was these gentlemen on the stock exchange who were in great anxiety about the situation.

Mr. Young: They asked you to see him?

Mr. Steele: They asked Mr. Gates to come in and see us, and he did.

Mr. Young: About what time was that?

Mr. Steele: It was a week or ten days, I should say, previous to the execution of those contracts of April 15th.

Mr. Young: Somewhere then about the fifth of April?

Mr. Steele: Somewhere in the early part of April.

Mr. Young: What is the next step you took? You got Davis & Hawley and Harris & Gates to sign these agreements?

Mr. Steele: Yes, sir.

Mr. Young: Then what did you do?

Mr. Steele: It was some little time before this stock was all deposited under those agreements. I think that took a month or six weeks. After that was done, we did not do anything for a while.

Mr. Young: When did you first take any active steps to dispose of this 306,000 shares of stock?

Mr. Steele: I think it was not until some time after Mr. Morgan's return—some time in August.

Mr. Young: Had you done anything up to that time?

Mr. Steele: Nothing of sufficient importance to impress itself on my recollection.

Mr. Young: Whom did you first see in connection with the sale of this stock to the Atlantic Coast Line Railroad Co.?

Mr. Steele: Mr. Walters.

Mr. Young: Where?

Mr. Steele: It was in New York. My impression is that it was at my office.

Mr. Young: Did he come to you or did you go to him?

Mr. Steele: That I do not recollect. My best recollection is that if he came to us it was at our suggestion—that we suggested the matter to him.

Mr. Young: Can you tell when that was?

Mr. Steele: Not definitely.

Mr. Young: You think it was after Mr. Morgan's return from Europe?

Mr. Steele: I am sure of that.

Mr. Young: Tell us what occurred between you and Mr. Walters at this interview where this matter was first discussed, which you sought to have discussed by asking him to come here?

Mr. Steele: We explained to Mr. Walters what the situation of the Louisville & Nashville stock was and asked him whether the Atlantic Coast Line would care to become a purchaser, and that led on to the negotiations which finally resulted in the purchase.

Mr. Young: Why did you seek the Atlantic Coast Line Railroad Company as a purchaser?

Mr. Steele: We have very great confidence in Mr. Walters, and

the management of the Coast Line, was in able and conservative people and we were entirely satisfied that that would be a good thing for the general situation if they would take it.

Mr. Young: That it would settle the fture of the Louisville & Nashville and settle the railroad situation?

Mr. Steele: I do not know about settling the railroad situation. What we had in mind more was settling the general commercial situation; that it would create a feeling of confidence in the people that the railroad situation in the South was in the hands of conservative people.

Mr. Young: Was anything ever said to you by Mr. Walters or Mr. Walters suggested to you that so far as Louisville & Nashville stock was concerned, the Atlantic Coast Line would be a safe depository of this stock.

Mr. Steele: Mr. Walters never made such a suggestion to me nor I to him.

Mr. Young: Was anything every said to you by Mr. Walters or by you to Mr. Walters?

Mr. Steele: As to the Southern Railway having an interest in it?

Mr. Young: No, in so far as the Southern Railway was concerned that the Atlantic Coast Line Railroad Company would be a safe depository of the Louisville & Nashville stock?

Mr. Steele: I do not think that was ever discussed so far as I recollect. It had nothing to do with the negotiations or business part of the transaction. We knew, of course, that the—I do not exactly know how to style it—we knew that Mr. Walters' administration—I call it Mr. Walters' administration, but I mean Mr. Elliott and all the officers—was conservative, and I am sure the Southern was quite satisfied to see the Louisville & Nashville go to the Atlantic Coast Line, but beyond that I do not think the question was discussed as far as I recollect—certainly not in anything but a casual way.

Mr. Young: If it was discussed you do not recall it?

Mr. Steele: No, I do not.

Mr. Young: Did that consideration enter your mind at all?

Mr. Steele: Only in the way that we, of course, were interested in the Southern Railway and were anxious to see the railway situation in the South in the hands of conservative railroad managers, and from that point of view it interested us.

Mr. Young: Were you not anxious to see the Louisville & Nash-

ville railroad in the hands of people that you consider conservative and whose relations to your firm and the Southern Railway were kindly and amicable.

Mr. Steele: Undoubtedly; yes, sir, it was a very agreeable thing to have it go that way.

Mr. Young: That was one of the reasons that induced you directly or indirectly, to communicate with Mr. Walters and have him come to you and discuss the question of the disposition of the Louisville & Nashville?

Mr. Steele: No, I think not, I think the only reason was that we thought the Atlantic Coast Line people were strong and probably would be able to take this property, and we were quite satisfied that it should go to their control.

Mr. Young: Why did it suggest itself to your mind to go away over on the Atlantic Coast to find people to come over into Kentucky and Tennessee where the Atlantic Coast Line has no connection to control the Louisville & Nashville Railroad?

Mr. Steele: I do not think I can answer that any better than I have already.

Mr. Young: You thought they were safe and reliable people and would not disturb any commercial or transportation conditions if they owned it?

Mr. Steele: I thought the management in their hands would be wise and conservative and would tend to establish confidence in the general commercial situation all through the South.

Mr. Young: Do you think that Mr. Walters or Mr. Erwin, as able as they may be, know anything about conditions as they exist in regard to transportation in Louisville, Chicago and St. Louis?

Mr. Steele: I have no doubt they know a great deal about it.

Mr. Young: Was that any part of the reason, because they knew the conditions that effect railway transportation over there that induced you to seek then to make this sale of the Louisville & Nashville stock?

Mr. Steele: Not any special knowledge, but I was quite sure that they knew, as expert railroad managers, what the situation was through all those States.

Mr. Young: It was confidence in the management of these gentlemen that induced you to seek them as the depository for the control of the Louisville & Nashville road?

Mr. Steele: Yes, sir.

Mr. Young: Did you have anything to do personally with the is-

sue of a circular dated August 27th, 1902, by the voting trustees of the Southern Railway Company?

Mr. Steele: Yes, sir.

Mr. Young: Did you write it?

Mr. Steele: I had a hand in some of it. I could not pick out the part I wrote.

Mr. Young: Were you here when Mr. Morgan testified?

Mr. Steele: I was; yes, sir.

Mr. Young: Referring to the portion of the paragraph I read to him and on which I examined him, did you have anything to do with the preparation of that paragraph?

Mr. Steele: I had something to do with it, but I do not know whether I wrote the whole or part of it, or any part of it.

Mr. Young: This part: "Therefore we do not hesitate to state that, in our opinion, it is decidedly for the interests of the stockholders of the Southern Railway to protect their property by an extension of the voting trust until negotiations now pending for further development and strengthening of its lines shall be settled beyond any risk of being overturned." Did you have anything to do with that part of it?

Mr. Steele: I certainly knew about it. I do not know whether I composed it or not.

Mr. Young: What did that refer to "settled beyond any risk of being overturned."

Mr. Steele: "Risk of being overturned" referred to the danger that might arise if the Southern railway stock was distributed so that it could be purchased in the market and control of the road obtained that way by some other interests. It might have been to the interest of some other line to have bought control of the Southern Railway stock and stopped the progress of the Southern Railway Company, which we thought would be very prejudicial to the interests of minority stock holders who had not been bought out, perhaps by a rival line or rival interests, or what not. It was in order to avoid the very situation that occurred in the Louisville & Nashville and which occurred previously in the Northern Pacific. We thought it was wise to continue the voting trust until the Southern Railway System had been practically completed.

Mr. Young: Why would that change of ownership have anything to do with the development and strengthening of its lines? Can not one set of men strengthen it as well as another?

Mr. Steele: If it was bought by a rival interest, it would

be to their interest not to develop it, but to subordinate it to some other property they owned.

Mr. Young: It was done to prevent the acquisition of the stock of the Southern Railway Company by a competing or a rival line?

Mr. Steele: To prevent that danger arising in the situation.

Mr Young: In other words, you did not want the Southern Railway Company from your standpoint—and J. P. Morgan & Co. have an interest in the Southern Railway—to be bought by a competing or rival line

Mr. Steele: It was entirely from the standpoint of the voting trustees. Morgan & Co. had nothing to do with the issuing of that circular. It was the voting trustees that were in control of the property.

Mr Young: You are not a voting trustee?

Mr. Steele: No, sir.

Mr. Young: In what particular character did you enter upon the composition of this document?

Mr. Steele: As an adviser to Mr. Morgan.

Mr. Young: Tell me if you had any part in the composition of this sentence: "Therefore we do not hesitate that, in our opinion, it is decidedly for the interests of the stockholders of the Southern Railway to protect their property by an extension of the voting trust until negotiations now pending for the further development and strengthening of its lines shall be settled beyond any risk of being overturned, and until the completion of other negotiations now pending in relation to transportation interests in the Southern States which have an important bearing upon the interests of the Southern Railway Company." What did that refer to?

Mr. Steele: Principally to this question of the disposition of the Louisville & Nashville Railroad.

Mr. Young: You had in your mind, either when you composed it or approved it, the disposition of the stock of the Louisville & Nashville Railroad which was then practically controlled by J. P. Morgan & Co.

Mr. Steele: Yes, sir; as to where it would ultimately go.

Mr. Young: Did you have anything to do with the issue of this syndicate agreement filed here? It has no signatures.

Mr. Steele: I had to do with the preparation of it. It was never issued.

Mr. Young: It was sent out to some people.

Mr. Steele: Not at all. It was never sent out to anybody.

Mr. Young. I saw a copy in Louisville.

Mr. Steele: Well, somebody came and got it.

Mr. Stetson: After the syndicate agreements are signed a copy is sent to each subscriber with the notification that his subscription has been accepted, and he is furnished a copy to preserve in his files. It is not sent out for the purpose of soliciting. I am right about that, am I not?

Mr. Steele: It is unusual to send a copy to a subscriber.

Mr. Young: You do not want them made public?

Mr. Steele: Do not want them made public.

Mr. Young: It is considered a confidential circular.

Mr. Steele: Not a circular, a private agreement.

Mr. Young: More sought this than you could accommodate?

Mr. Steele: Yes, sir.

Mr. Young: You composed this entire paper?

Mr. Steele: No, I did not compose it entirely. I think Mr. Stetson was the author of it.

Mr. Young: You furnished the material for it and Mr. Stetson put it in shape?

Mr. Steele: Yes, sir.

Mr. Young: This has been suggested by one of my associates —you need not answer if you do not want to—did this syndicate agreement result in profits to J. P. Morgan & Co.

Mr. Steele: That is something I could not answer if I were willing, Mr. Young, at this time.

Mr. Young: That is all.

CROSS EXAMINATION.

Mr. Stetson: Mr. Steele, you have stated that your conference with Mr. Walters was after Mr. Morgan returned in August. Are you quite certain as to the date?

Mr. Steele: No, I am not. That is my best recollection.

Mr. Stetson: If Mr. Walters testified that his conference with you was in June, would you have any memory to the contrary?

Mr. Steele: None whatever.

Mr. Stetson: Was any part of this transaction or these transactions as to which you have testified or which have been brought to your attention in any way connected with or dependent upon any intention of any person known to you in any way to affect com-

petition between the Louisville & Nashville and Southern Railway or any other railways, or to affect rates?

Mr. Steele: It was not in any way whatever.

Mr Stetson: That is all.

Mr. Baxter: Mr. Steele, I assume there are a great many financial contracts that pass under the observation of your firm. I wish to know whether you have any knowledge, information or belief that there is now or ever has been any contract, combination, agreement or understanding, express or implied, oral or written, to harmonize or unify the management of the Atlantic Coast Line, Southern Railway and the Louisville & Nashville Railroad by means of what is called a community of interest or otherwise. Do you have any knowledge, information or belief of the existence of anything of the kind?

Mr. Steele: There is absolutely nothing of the kind to my knowledge.

Mr. Baxter: Have you any information or belief that there is such?

Mr. Steele: None whatever.

Mr. Baxter: That is all.

Mr. Young: We are through.

Commissioner Prouty: Mr. Steele, you are interested with J. P. Morgan & Co. in the welfare of the Southern Railway?

Mr. Steele: Yes, sir; we are.

Commissioner Prouty: And the Louisville & Nashville has been a competitor?

Mr. Steele: They have.

Commissioner Prouty: Did it occur to you when this stock was put in your hands to dispose of that it would be well to dispose of it in such a way as to put those two systems in harmony with each other? Was that one thing you had in mind when you came to dispose of the Louisville & Nashville stock?

Mr. Steele: We should have been very glad to have had that in mind had we supposed it could be done, but as we understood, there was nothing of that kind that could be accomplished. All we sought was to get the property into the hands of conservative and able railroad people to manage.

Commissioner Prouty: Mr. Hill, up in the northwest figured out a scheme by which that could be done. Did you consider the advisability or possibility of a similar scheme?

Mr. Steele: No sir.

Commissioner Prouty: You assumed it was impossible so long as those roads were competing roads.

Mr. Steele. That is what we were advised was the law.

Commissioner Prouty: That is all.

The Chairman: Any further questions to be asked Mr. Steele? If not he will be excused.

The witness was excused.

Mr. Stetson: I have just called Mr. Perkins on the telephone. He is at a meeting at Lakewood and will come tomorrow if necessary, but it will be exceedingly embarrassing for him to do so.

The Chairman: What do you expect to show by Mr. Perkins?

Mr. Young: Mr. Perkins has been really the most active member of the firm of J. P. Morgan & Co. in the sale and disposition of this stock.

Mr. Steele: If I may be allowed to suggest, Mr. Perkins and I were together all through this transaction, and I am quite sure that there is not anything that Mr. Perkins knows that I do not know. Of course, if it is the desire of you gentlemen to have him come, he must come.

Mr. Young: I desire to find the gentlemen who composed this particular paragraph.

Mr. Steele: I do not think that Mr. Perkins had anything to do with it. I think that Mr. Stetson and I probably did it together.

Commissioner Prouty: Do you expect to contradict the testimony of Mr. Walters, Mr. Steele and Mr. Morgan?

Mr. Young: No, sir; I expect, may be, to extend it a little, not to contradict it.

Commissioner Prouty: Their testimony is that they did not dispose of the Louisville & Nashville to the Southern Road or in any way prevent competition between the Southern road and the Louisville & Nashville because they understood they had no right to. Do you expect to show that they did?

Mr. Young: We have not examined anybody about the Coast Line on this question, and, if the commission will remember, Mr. Walters said that that matter was discussed. It seems to me that that has an important bearing on this question, what passed through the minds of these gentlemen when they undertook to dispose of the stock of the Louisville & Nashville. We do not know much about it and are trying to find out. I could not upon my professional honor state exactly what we do propose to show, but we want to know all about it.

The Chairman: In view of the testimony given to-day and the nature of the proceedings you will say that the complainant desire to examine Mr. Perkins. Is it important to do so? You must take that responsibility.

Mr. Pratt: We would be much better satisfied if the Commission would hear the testimony of Mr. Perkins.

The Chairman: That is, you deem it important to your client that Mr. Perkins give his testimony in this proceeding. If you take that position, of course we must acquiesce in it. Mr. Stetson, at what hour can Mr. Perkins be here tomorrow?

Mr. Stetson: There is a very important meeting there which was appointed long before this. It has no connection with this matter. Mr. Perkins is the vice-president of the New York Life Insurance Company and this meeting, as I say, was assigned a long time ahead. There are men there from all over the country. Mr. Perkins is one of the most important men, and it will be difficult for him to come here without breaking up the entire meeting. Of course, I shall do whatever the Commission say.

The Chairman: We will hold this matter in abeyance for the present and see whatever witnesses are desired.

Mr. Young: We desire to examine Mr. Belmont. Is he here?

Mr. Stetson: No; he will come.

The Chairman: Who else?

Mr. Stetson: I wish to say that Mr. Lanier is sick in bed at his house and knows as little about this matter as any one. Mr. Baker can come, but Mr. Lanier, as I say, is confined to his house.

Mr. Young: We will excuse Mr. Lanier on that ground. Is Mr. Gates here?

Mr. Stetson: Mr. Gates is in Texas.

Mr. Young: Is his partner, Mr. Harris, here?

Mr. Stetson: I do not know. I do not answer as to those gentlemen. The only gentlemen I am responsible for are Mr. Lanier, Mr. Baker and Mr. Perkins. Mr. Baker and Mr. Perkins will be here.

Mr. Elliott: If the Commission please, I desire to file as an exhibit to the answer of the Atlantic Coast Line Company a copy of the resolution of the Louisville & Nashville Railroad Company, whereby it gives its assent to the purchase of this stock by the Atlantic Coast Line Railroad Company. I did not have a copy at the time the answer was filed. The resolution was passed in accordance with the laws of the State of Kentucky. I desire also to file a certi-

fied copy of the charter of the Atlantic Coast Line Railroad Company, which sets forth specifically its power to acquire the stock of other companies. I asked to have these go into the record with our answer.

The Chairman: Very well.

(The same are attached to the answer of the Atlantic Coast Line Railroad Company filed in the record.)

Mr. Stetson: I desire to file the exhaustive examination of Mr. Milton H. Smith and Judge Alexander T. Humphreys, the general counsel of the Southern Railway in Kentucky, which examination was conducted by the Railroad Commission of Kentucky in order to avoid bringing those gentlemen here. Is there any objection?

Mr. Young: Yes, sir; we want to examine Mr. Smith and Mr. Humphreys and will do that in Louisville.

Mr. Stetson: You did examine them.

Mr. Young: Not in a satisfactory way.

Mr. Stetson: Do you mean that the result was not satisfactory?

Mr. Young: I mean it was done before this complaint was filed.

Mr. Stetson: It is the same question.

Mr. Young: We will take the deposition of those gentlemen at Louisville at the proper time. I object to it because we are going to put those gentlemen on the stand.

The chairman: Well, gentlemen, we will take an adjournment until 10:30 to-morrow morning.

At 4:55 p. m., the Commission adjourned until 10:30 o'clock a. m., January 16.

United States Court Rooms,
New York, N. Y.,
January 16, 1903, 10:30 a. m.

The Chairman: Gentlemen, please give us your attention. Are you ready to proceed?

Mr. Stetson: Mr. Chairman, Mr. Perkins is here and we are ready to proceed.

The Chairman: Are complainants ready to proceed?

Mr. Young: Yes, sir. We appreciate the courtesy of counsel in having Mr. Perkins present this morning. It is our desire to examine Mr. Belmont first.

Mr. Stetson: You may take Mr. Belmont first if you so desire.

AUGUST BELMONT,

having been duly sworn, testified as follows:

Mr. Young: Mr. Belmont, you were formerly president of the Louisville & Nashville Railroad, were you not?

Mr. Belmont: No, sir; I have never been president.

Mr. Young: You were chairman of the Board of Directors?

Mr. Belmont: Yes, sir; chairman of the Board of Directors.

Mr. Young: Do you still hold that position?

Mr. Belmont: I do.

Mr. Young: Are you a member of the Board of Directors of the Louisville & Nashville Railroad at this time?

Mr. Belmont: Yes, sir.

Mr. Young: In addition to your other position?

Mr. Belmont: Yes, sir.

Mr. Young: How long have you been chairman of the Board of Directors of the Louisville & Nashville Railroad Company?

Mr. Belmont: Since 1890.

Mr. Young: What was the first information you had officially that Mr. Gates or Gates & Harris had secured a control of the majority of the stock of the Louisville & Nashville?

Mr. Belmont: Well, I had no notice officially. I do not understand that question. I became aware of it by general report.

Mr. Young: When did you first become aware of that fact by general report?

Mr. Belmont: I should think about the 8th of 9th of April it was claimed.

Mr. Young: At that time were you yourself a holder of the stock of the Louisville & Nashville Railroad?

Mr. Belmont: Yes, of a certain amount.

Mr. Young: Is there any reason why you should not give that? If you prefer not to, I will not press it. I mean the amount you held.

Mr. Belmont: I think that is immaterial, though I see no objection.

Mr. Young: It is immaterial. Did you in any way have anything to do with securing the control of the stock held by Gates & Harris?

Mr. Belmont: Nothing whatever.

Mr. Young: When did you first know that Messrs. J. P. Mor-

gan & Co. had undertaken to secure control of the Louisville & Nashville stock held by Gates & Harris?

Mr. Belmont: I did not know it until they had.

Mr. Young: Did you have any part afterwards in negotiating the transactions by which the Atlantic Coast Line Railroad Company became the owner of a majority of the stock of the Louisville & Nashville Railroad?

Mr. Belmont: None whatever.

Mr: Young: Did you attend the annual meeting, the last annual meeting, of the Louisville & Nashville Railroad Company called in Louisville, Kentucky?

Mr. Belmont: Yes, sir.

Mr. Young: By that do you mean the adjourned meeting or the annual meeting?

Mr. Belmont: I attended the adjourned meeting.

Mr. Young: You were not then at the regular annual meeting, but the adjourned meeting?

Mr. Belmont: Personally I attended the adjourned meeting, but was represented at the regular meeting.

Mr. Young: I will read to you a resolution which has been filed and dated October 30, 1902, extract from minutes of meeting of Board of Directors of the Louisville & Nashville Railroad held in New York City on that day: "On motion duly seconded it was resolved that the Louisville & Nashville Railroad Company hereby assents to the purchase and holding of a majority of its capital stock by the Atlantic Coast Line Railroad Company." Were you present at that meeting?

Mr. Belmont: Yes, sir.

Mr. Young: Was that a full meeting of the Board?

Mr. Belmont: Yes, sir.

Mr. Young: Who introduced this resolution?

Mr. Belmont: I can not tell you who introduced it. I think it was Mr. Waterbury; but the records will show that.

Mr. Young: I have not the records. That is why I ask you. Don't you remember?

Mr. Belmont: No, sir; I do not remember. I do not remember the individual who introduced the resolution.

Mr. Young: Judge Cadwallader, I will ask you to furnish a list of the members present at that meeting.

Mr. Cadwallader: I will furnish you a copy of the minutes as far as they relate to this subject.

The Chairman: And those minutes will show what directors were in attendance?

Mr. Belmont: I can not say, but I assume they will.

Mr. Cadwallader: I presume the minutes will show who were present to make a quorum.

Mr. Young: Mr. Belmont when Gates & Co. secured control of a majority of the stock of the Louisville & Nashville Railroad Company, was any such resolution as this passed?

Mr. Belmont; None whatever.

Mr. Young: What was the necessity of recognizing this majority control of the Atlantic Coast Line Railroad Company?

Mr. Belmont: There is no such record.

Mr. Stetson: Are you after information, or do you want to test the witness? I drew that resolution.

Mr. Young: I want the facts from the witness.

Mr. Stetson: Then he don't know.

Mr. Young: I object to these suggestions by Mr. Stetson.

Mr. Stetson: He does not know.

Mr. Belmont: I don't know what you refer to. I misunderstood that, I think. I want to correct it.

Mr. Stetson: Correct it in accordance with your recollection.

The Chairman: It appeared yesterday that such a resolution was passed. Mr. Belmont states that he was present at the meeting of the Board of Directors when the resolution was adopted. I understand Col. Young's question to be in substance, Why was that resolution passed?

Mr. Young: Why was that resolution passed by the Board of Directors of the Louisville & Nashville Railroad Company?

Mr. Belmont: We know that it was done at the request of the majority holders of the stock.

Mr. Young: Who communicated to you that request?

Mr. Belmont: Mr. Stetson.

Mr. Young: As the attorney of the Louisville & Nashville Railroad, or as the attorney of Messrs. J. P. Morgan & Co.?

Mr. Belmont: I shall have to refresh my memory about that.

Mr. Young: Now, Mr. Belmont, as a director of the Louisville & Nashville Railroad and chairman of its Board of Directors, you had nothing whatever to do with that resolution, had you, up to the time it came into the meeting?

Mr. Belmont: Yes, sir; I conferred with regard to it with Mr. Stetson.

Mr. Young: Mr. Stetson sought you out to confer with you in regard to the Board of Directors of the Louisville & Nashville passing that resolution, did he?

Mr. Belmont: Yes, sir.

Mr. Young: And you passed it because he represented J. P. Morgan & Co., who controlled a majority of the stock?

Mr. Belmont: No; not for that reason.

Mr. Young: If it had been left to your own judgment as a director, without any suggestion from outside people, would you have passed that resolution or had it prepared?

Mr. Belmont: It was considered best to do that, although that was not from my own suggestions.

Mr. Young: Now, unaided by suggestion from the outside, did it appear to you, as a director of the Louisville & Nashville Railroad Company, that that was the best thing to do?

Mr. Belmont: I never do anything in regard to such matters unaided or without advice from counsel.

Mr. Young: Did you advise with your own counsel?

Mr. Belmont: Yes, sir.

Mr. Young: Did you think then that the Louisville & Nashville Board of Directors had the power to pass a resolution approving the sale of a majority of its stock to another corporation, or that it was necessary?

Mr. Belmont: It was considered best to do so, under advice of counsel.

Mr. Young: Do you know whether those counsel were advised by people who held the majority control?

Mr. Belmont: They were requested by me to confer, and did so.

Mr. Young: The request was made of you in the first place?

Mr. Belmont. Yes, sir.

Mr. Young: And you referred it to the counsel, and you were informed that under all the circumstances it was the best thing to do.

Mr. Belmont: Yes, sir.

Mr. Young: I will ask you whether in the history of the Louisville & Nashville Railroad before it was deemed best to recognize a majority holding the stock?

Mr. Belmont: The matter was never broached.

Mr. Young: There was a change of directors of the Louisville & Nashville Railroad Company at the last meeting, which was an adjourned meeting?

Mr. Belmont: Yes, sir.

Mr. Young: Do you remember how many changes were made?

Mr. Belmont: Six new directors were elected.

Mr. Young: Well, who named those new directors to you?

Mr. Belmont: Mr. Waters of the Coast Line

Mr. Young: Was that request in writing, or oral?

Mr. Belmont: It was conveyed to me on the part of Mr. Walters by Mr. Perkins.

Mr. Young: Was there any understanding or discussion with you before your election as a director about the policy of the Louisville & Nashville Railroad and its management in the future?

Mr. Belmont: None.

Mr. Young: That subject was never mentioned to you by anybody at all?

Mr. Belmont: Yes; I asked those in interest whether the policy would be the same; otherwise I would not consent to be associated with the directory. Or, I will put it in this way: That it was the understanding that the policy was not to be changed, and therefore I would continue.

Mr. Young: When you use the word "policy" in regard to the future policy of the Louisville & Nashville Railroad, what did you mean?

Mr. Belmont: I meant the conduct of the interests of the railroad for itself in the manner in which it had always been conducted.

Mr. Young: How long had you and your associate directors been in control of the Louisville & Nashville Railroad?

Mr. Belmont: Always. There had been changes in the constitution of the Board from the time I was chairman, from time to time, but there has never been any control, if that is what you mean.

Mr. Young: You had managed its affairs; you had been chairman of the Board of Directors for a number of years?

Mr. Belmont: Yes, sir.

Mr. Young: When did it first dawn upon your mind that the Atlantic Coast Line Railroad Company could manage the Louisville & Nashville Railroad Company better than you and your associates?

Mr. Belmont: That has never dawned upon my mind.

Mr. Young: You are still of the opinion that you could do it better? And this change has been the result of conditions over which you had no control?

Mr. Belmont: That is it.

Mr. Young: Do you feel now, as a director of the Louisville & Nashville Railroad that the Atlantic Coast Line can manage its affairs better than you and your associates managed it when you were independent of their control—and when I say better, I mean in regard to the discharge of its duties to the public?

Mr. Belmont: It would be too egotistical to say that.

Mr. Young: We will pardon egotism, Mr. Belmont. Do you know anything about the typographical conditions which surround the Louisville & Nashville Railroad and the Atlantic Coast Line Railroad in southern territory; say, in Alabama and Georgia and North Carolina?

Mr. Belmont: Yes, in a general way.

Mr. Young: Do you know whether at, say, Montgomery or Birmingham, conditions exist which would render it injurious to the stockholders of the Louisville & Nashville Railroad to have that road managed by the Atlantic Coast Line Railroad?

Mr. Belmont: I do not.

Mr. Young: Don't you know that from Montgomery east, on east bound traffic, there would be competition between the Louisville & Nashville Road and the Atlantic Coast Line Railroad?

Mr. Belmont: Not necessarily.

Mr. Young: Well, I am not speaking about whether it is necessary or not, but whether it is possible and reasonable.

Mr. Belmont: In regard to all questions of traffic I will say that those are not questions that are directly under my control. The organization of the Louisville & Nashville Railroad places all traffic matters in the hands of the president and all financial matters in the hands of the chairman of the board.

Mr. Young: With your acquaintance with railways and railway management, I ask you to tell the Commission if it is not true that by operating and controlling the Louisville & Nashville it was possible and probable that the Atlantic Coast Line Railroad Company could divert over to its own line traffic from points in Alabama at least from the Louisville & Nashville Railroad?

Mr. Belmont: I do not know that I can answer that.

Mr. Young: Did you do anything after you were aware of the fact or rumor that Gates & Harris had secured control of the Louisville & Nashville Railroad to wrest control from them or to secure it again for the gentlemen who had acted with you in the past?

Mr. Belmont: I do not think I understood you.

Mr. Young: I will ask the stenographer to repeat the question.

The question was repeated by the stenographer.

Mr. Belmont: No, sir.

Mr. Young: Did you do anything to get back a majority of the stock from Gates & Harris after you found out they had it?

Mr. Belmont: No, sir; nothing.

Mr. Young: Did you surrender unconditionally, or what did you do?

Mr. Belmont: There was nothing for me to surrender.

Mr. Young: You surrendered the road, did you not?

Mr. Belmont: I did not.

Mr. Young: You have surrendered control of it to the Atlantic Coast Line Railroad Company, have you not?

Mr. Belmont: We have not.

Mr. Young: Did not their proxy elect you as director?

Mr. Belmont: Yes, sir.

Mr. Young: Haven't they got control and didn't you surrender—

Mr. Belmont: There was nothing to surrender.

Mr. Young: We will change the word "surrender." That is a word that apparently does not please you. You have not now the control in the management of the Louisville & Nashville Railroad that you had before the majority of the stock was secured by the Atlantic Coast Line Railroad Company?

Mr. Belmont: Quite the same.

Mr. Young: You have the same?

Mr. Belmont: Exactly the same.

Mr. Young: And act with the same independence?

Mr. Belmont: Precisely.

Mr. Young: Then why did you pass that resolution that I showed you a while ago if you were acting with the same independence as before?

Mr. Belmont: Because it was considered the best policy of the road to acquiesce in the majority holding.

Mr. Young: Then you did it because a majority told you to do it, and not because it suggested itself to your mind that it was the best thing to do?

Mr. Belmont: It suggested itself as the best thing and was proved to be the best thing for the interest of the stockholders in general.

Mr. Young: When did the Louisville & Nashville Railroad Company authorize the issue of fifty thousand additional shares of stock that was subsequently sold on the market?

Mr. Belmont: On the 7th of April.

Mr. Young: What was done with that stock?

Mr. Belmont: It was sold in the market.

Mr. Young: Was there not an agreement made to sell it before it was issued?

Mr. Belmont: None whatever.

Mr. Young: About the time it was issued?

Mr. Belmont None whatever.

Mr. Young: Was there not an agreement to sell it before it was properly listed on the stock exchange?

Mr. Belmont: None whatever.

Mr. Young: When was it listed?

Mr. Belmont: I do not recall the date—thirty days from the 9th. It was thirty days after the application.

Mr. Cadwallader; Some time afterwards; considerable time afterwards.

Mr. Belmont: May the 8th.

Mr. Young: It was listed May the 8th?

Mr. Belmont: Yes, sir.

Mr. Young: When was it sold?

Mr. Belmont: The first part of April.

Mr. Young: And you sold it before you listed it?

Mr. Belmont: Yes, sir.

Mr. Young: Who did you sell it to?

Mr. Belmont: In the open market.

Mr. Young: Did the directors buy any of it?

Mr. Belmont: Not that I am aware of. I do not know anything about it.

Mr. Young: Did you ever see the list of the people who bought it?

Mr. Belmont: Yes, sir.

Mr. Young: Who was it delivered to?

Mr. Belmont: I could not tell you that. When stock is sold in the market, it is always reported—what houses.

Mr. Young: You were chairman of the Board of Directors?

Mr. Belmont: It was sold to stock houses in the Street.

Mr. Young: Then the Louisville & Nashville Railroad sold it to stock houses in the Street?

Mr. Belmont: It was sold in the open market.

Mr. Young: Who owned it? Who called for it?

Mr. Belmont: Whoever bought it.

Mr. Young: Do you know how many issues were made—how many separate certificates were made out?

Mr. Belmont: I could not tell you as to that. It is impossible. Sometimes stock that is bought is not transferred for a long time afterward.

Mr. Young: I do not think I care to ask Mr. Belmont anything further now, if it please the Commission.

Mr. Baxter: Mr. Belmont, it has been alleged in the pleadings in this case, and publications to that effect have been made in the newspapers, that there has at some time been, and is now, some kind of contract, agreement, or understanding, either expressed or implied, either oral or written, the object of which is to place under one control, by community of interest or otherwise, the Louisville & Nashville Railroad, the Southern Railway and the Atlantic Coast Line, and I wish you to state whether you have any knowledge, information or belief that any such contract, agreement or understanding now exists or ever did exist.

Mr. Belmont: None whatever.

Mr. Baxter: That is all I care to ask.

Mr. Cadwallader: To refresh your recollection, Mr. Belmont, I will ask one question, whether or not with reference to the passage of this resolution you were informed that under the laws of Kentucky, or under some legislation, it was necessary for a foreign corporation to hold a majority of the stock of this company, the Louisville & Nashville Railroad Company, to have this resolution passed?

Mr. Belmont: I was so informed.

Mr. Cadwallader: Therefore, when you were asked whether you of your own motion would have adopted this resolution, I ask you whether—your memory being refreshed—the passage of the resolution was in any way affected by information that some such thing was required by law? Don't you recollect that?

Mr. Belmont: Yes, sir; I recollect that.

Mr. Cadwallader: Was there a difference in that respect between the ownership of individuals and the ownership of a corporation?

Mr. Belmont: Yes.

Mr. Cadwallader: Did that therefore affect your mind with

reference to the passage of this resolution? In other words, did the legal advice you received on that subject affect you in the passage of that resolution?

Mr. Belmont: Yes, sir.

Mr. Stetson: Mr. Belmont, had I not, in connection with your counsel, Mr. Todd, of the firm of Strong & Cadwallader, called your attention to section 770 of the Revised Statutes of Kentucky, as amended by chapter 58 of the laws of Kentucky of 1901, which stated that a majority of the stock of a corporation could be held by another corporation only with the consent of the corporation whose stock was so held?

Mr. Belmont: Yes, sir.

Mr. Stetson: And I have advised you representing the purchasers of the majority of the stock that it was about to be sold to the Atlantic Coast Line Railroad Company?

Mr. Belmont: Yes, sir.

Mr. Stetson: And before the sale was carried out it was desired by us as representing the majority of the stock that that assent should be given to such purchase in order to meet the laws of Kentucky? Is that right?

Mr. Belmont: Yes, sir; that is right.

Mr. Stetson: That is all.

Mr. Young: Mr. Belmont, when did the Board of Directors of the Louisville & Nashville Railroad pass a resolution accepting the provisions of the Constitution of Kentucky of 1890?

Mr. Belmont: I do not recall the exact date of the meeting, but it was in connection with the purchase of the Monon, before that.

Mr. Young: Was the acceptance of the provisions of the Constitution of Kentucky made entirely with reference to the Monon Railroad?

Mr. Belmont: Practically; yes.

Mr. Young: Who advised you that the directors, rather than the stockholders, could consent to the owning of the stock of the Louisville & Nashville Railroad by another corporation?

Mr. Belmont: Our own counsel.

Mr. Young: And you did that on the faith of that instead of referring it to the stockholders, which met a few days before you came to New York, and passed it by the Board of Directors?

Mr. Belmont: Yes, sir.

Mr. Young: Did it ever suggest itself to your mind that so

important a matter as the control of a great system like the Louisville & Nashville Railroad should be passed upon by the stockholders rather than by the Board of Directors?

Mr. Belmont: It would have amounted to the same thing.

Mr. Young: The stockholders would at least have had notice of it if you had called them together for that purpose.

Mr. Belmont. They would have voted, or the majority would have voted in favor of it. It was unnecessary to go through anything of that sort simply as a matter of form.

Mr. Young: Did it not suggest itself to you as chairman of the Board of Directors that you owed some sort of duty to the 294,000 shares of stock that were not included in the majority control?

Mr. Belmont: It did.

Mr. Young: And that they had a right to be heard?

Mr. Belmont: I thought I represented them and thought it was unnecessary.

Mr. Young: You did not have their proxies, did you?

Mr. Belmont: Not at that time.

Mr. Young: They did not elect you?

Mr. Belmont: Yes, sir.

Mr. Young: I understand the majority control elected you.

Mr. Belmont: No; the officers only hold for one year.

Mr. Young: Do you mean to tell the Commission that you undertook to represent the 294,000 shares of stock outstanding as against the 306,000 shares, and in passing that resolution you felt that you were representing the 294,000 shares of stock?

Mr. Belmont: I was, because—

Mr. Young: And the minority had no notice of this matter?

Mr. Belmont: I was, because it was for their best interest.

Mr. Young: Were you told by anybody not to bring this up at the annual meeting?

Mr. Belmont: Not at all.

Mr. Young: How many proxies of those 294,000 shares of minority stock did you have when you went to Louisville? How many did you have?

Mr. Belmont: Between 70 and 80 thousand.

Mr. Young: Did you have any proxies at all in your own name?

Mr. Belmont: All of them.

Mr. Young: Did you vote all the proxies, majority and minority too?

Mr. Belmont: All the proxies were in my name, including the majority.

Mr. Young: You had 70,000 shares of minority and 306,000 of majority?

Mr. Belmont: I had 380,000 proxies which I could have voted just as I liked.

Mr. Young: Did anybody vote any stock on that occasion but you?

Mr. Belmont: Yes.

Mr. Young: Who?

Mr. Belmont: Some small amounts of local stock.

Mr. Young: Amounting to a few hundred shares?

Mr. Belmont: To a few thousand shares.

Mr. Young: So, then, admitting that you had 380,000 shares, there was still 220,000 shares outside and unrepresented at that meeting.

Mr. Belmont: I did not have the proxies at the adjourned meeting.

Mr. Young: It was the adjourned meeting I was talking about.

Mr. Belmont: No; I did not have proxies but for about 77,000 shares at the adjourned meeting.

Mr. Young: And who voted the others?

Mr. Belmont: The Coast Line.

Mr. Young: Who represented the Coast Line?

Mr. Belmont: Mr. Walters.

Mr. Young: Now, did you feel that, as a director of the Louisville & Nashville Railroad, you had a right to pass control of that property to a foreign corporation that had not a single line in the State of Kentucky, and at certain points would necessarily compete with it, without letting the minority stockholders know of your intention?

Mr. Stetson: Has Mr. Belmont testified that at certain points they compete with it?

Mr. Young: I thought he practically admitted. I will withdraw that and ask it this way:

Did you feel that when you were passing that resolution that you had any right to represent the 220,000 minority stockholders who had not given you a proxy to represent them at Louisville?

Mr Belmont: Yes.

Mr. Young: Who told you to do it?

Mr. Belmont: Nobody told me.

Mr. Young: You just assumed the responsibility of representing these minority stockholders in passing control of the Louisville & Nashville away, putting it under the control of a foreign corporation?

Mr. Belmont: I was given the responsibility to act for them.

Mr. Young: By whom?

Mr. Belmont: By themselves. By giving their proxies they gave authority.

Mr. Young: You say you had only 77,000 shares. There were still 220,000 shares of stock not represented there. Did you undertake to represent those?

Mr. Belmont: Those who were not represented at the meeting did not take sufficient interest one way or the other. They had an opportunity to give their proxies.

Mr. Young: They took the chances of war, and you figured it was not necessary to look after their interests, either as proxyholder or otherwise?

Mr. Belmont: I was looking after their interests.

Mr. Young: Now, to come back to this question: Do you think, under all the circumstances of this deal, that it was to the best interest of the minority stockholders to have the control of the Louisville & Nashville Railroad pass away to the Atlantic Coast Line Railroad Company?

Mr. Belmont: I do.

Mr. Young: That is all.

Mr. Stetson: Why do you consider it so?

Mr. Belmont: Because it gives them much better security than they would have had otherwise.

Mr. Stetson: It would have gone back to somebody else if it had not passed to the Atlantic Coast Line Railroad?

Mr. Belmont: Yes, sir.

Mr. Stetson: As compared with going to the Atlantic Coast Line or returning to the May purchasers, Gates & Co., which was to the interest of the minority stockholders?

Mr. Belmont: It was much better for the minority stockholders to have the control where it is to-day in view of the conservative management such as existed before it was bought in the open market.

Mr. Stetson: Counsel says he understands you to practically concede now that there was competition between the Atlantic Coast Line and the Louisville & Nashville Railroad. Did you in-

tend to be understood as conceding that there was any competition between them?

Mr. Belmont: No.

Mr. Stetson: Do you understand that there was competition between those two lines, either in the State of Kentucky or outside?

Mr. Belmont: None, except such as always exists between railroads not in direct competition.

Mr. Stetson: If there was any competition whatever, was it not of the most incidental and most insignificant character?

Mr. Belmont: Yes; not in a general way at all.

Mr. Stetson: Do you know of any competition of that character at all? As a matter of fact, do you know of any competition between those roads even of an incidental and insignificant character?

Mr. Belmont: Practically nothing that can be called competition. I desire to say with regard to the minority stockholders that the purchase of this control is well understood and the general drift was well understood, and it was with that in view that those proxies of the minority stockholders were sent to me to vote without restriction. Therefore I was justified in using my best judgment in voting them.

Mr. Stetson: Referring now not to the stockholders meeting, but to the directors' meeting at which this resolution was passed —at that meeting did you vote as a stockholder or as a director?

Mr. Belmont: As a director.

Mr. Stetson: Having been elected thereto by the vote of every stockholder represented at the annual meeting?

Mr. Belmont: Yes, sir.

Mr. Stetson: There were no votes against you?

Mr. Belmont: None whatever.

Mr. Stetson: You have been a director since 1890, have you not?

Mr. Belmont: Since 1887.

Mr. Stetson: And you were exercising your vote and power as a director and upon your responsibility as a director?

Mr. Belmont: Yes, sir.

Mr Stetson: Has there ever been any limitation or qualification of your right to exercise the usual powers of a director?

Mr. Belmont: None whatever. But at this meeting I presided. Therefore I cast no vote. The vote was cast by the directors perfectly untrammeled and after free discussion; they did not owe

their position any more to what were then the majority interests at all, and exercised their discretion in this matter and founded upon what they considered the best interests of the road.

Mr. Stetson: This vote was cast, then, by the directors elected prior to the transfer of the stocks?

Mr. Belmont: Yes, sir; absolutely.

Mr. Stetson: Have you ever had a request or a suggestion or a criticism from any stockholder of the Louisville & Nashville Railroad with reference to the transfer of this stock to the Atlantic Coast Line Railroad Company?

Mr. Belmont: Not one.

Mr. Stetson: Have you ever heard any complaint from any stockholder of that company?

Mr. Belmont: Not one.

Mr. Stetson: I would like to have entered as a part of the testimony here section 770 of the statutes of Kentucky as amended by the amendatory act thereof, chapter 58 of the laws of 1901?

Mr. Young: That will be all right.

The Chairman: Is there anything further to be asked of Mr. Belmont?

Mr. Young: I have a few questions. Mr. Belmont, do you know anything about the Plant System?

Mr. Belmont: Yes, sir.

Mr. Young: What is its western terminal, or what was its western terminal?

Mr. Belmont: That I can not tell you, not in that sense; not in detail.

Mr. Young: You do not know anything about the lines of the Plant System and the points to which they extend west?

Mr. Belmont: No; not in detail.

Mr. Young: If you do not know anything about where the lines of the Plant System extend west—

Mr. Belmont: I am not a traffic man in that particular sense at all, and therefore, except in a general way, I do not profess to be posted about that.

Mr. Young: If you do not know where its lines run, you do not know whether there would be competition or not.

Mr. Belmont: I do not mean to say I do not know where its lines are, but leading to any technical discussion of those sorts of problems, those are entirely out of my province.

Mr. Young: When Mr. Stetson asks you the general question

as to whether there is any competition or not, the fact is you do not know?

Mr. Belmont: Yes, sir; I do. I follow very much in all those matters the general advice of our technical managers.

Mr. Young: Then if you have made that statement you have made it on the faith of what Mr. Smith tells you and not on your own personal knowledge?

Mr. Belmont: Largely.

Mr. Young: That is all.

Mr. Stetson: Then if the learned and gallant counsel remarked that you had practically conceded that these were competing lines such concession was not founded upon knowledge?

Mr. Belmont: No, sir.

Commissioner Yeomans: What was Louisville & Nashville stock worth at the time Mr. Gates acquired control of the 306,000 shares?

Mr. Belmont: I do not know precisely.

Commissioner Yeomans: About what?

Mr. Belmont: In the neighborhood of 140. I do not recall the market value.

Commissioner Yeomans: What did the Atlantic Coast Line pay for it?

Mr. Belmont: 150. Mr. Perkins will be able to answer you precisely about that.

Mr. Young: Mr. Belmont, what is Louisville & Nashville stock worth now?

Mr. Belmont: About 127.

Mr. Young: On the market.

Mr. Belmont: On the market.

Mr. Young: 127?

Mr. Belmont: The quotation to-day is in that neighborhood or 128.

Mr. Stetson: Mr. Belmont, at the time of the issue of the five millions of stock in April, 1902, had there not been a rapid and large advance in the market price of Louisville & Nashville stock?

Mr. Belmont: Yes, sir; very.

Mr. Stetson: Until within a few weeks prior to that, had not the general range of Louisville & Nashville been at or below par?

Mr. Belmont: In the neighborhood of par; a little above par.

Mr. Stetson: And it is only within comparatively recent times that it has reached par, is it not?

Mr. Belmont: Yes, sir; very recently.

Mr. Stetson: Then from about the beginning of March, did not the value of that stock exhibit rapid and large fluctuations?

Mr. Belmont: Very.

Mr. Stetson: And up to the present time, or up to the time of lodging of the control with the Atlantic Coast Line, was there not very large fluctuations?

Mr. Belmont: Very.

Mr. Stetson: Did not the price of the stock at one time rise as high as 164?

Mr. Belmont: Yes, sir.

Mr. Stetson: And what is the lowest it has been according to your recollections—during the year 1902?

Mr. Belmont: I could not tell you—101; some such neighborhood as that. I could not tell you exactly.

Mr. Stetson: So the present value of the minority stock is substantially 25 per cent. in excess of the value of the stock of the company at the beginning of last year?

Mr. Belmont: Yes, sir.

Mr. Young: I would like to ask you a question. Did not the stock of the Louisville & Nashville Railroad, at the time it was supposed that Gates had control of it, reach a higher point than it had ever reached before?

Mr. Belmont; Yes, sir

Mr. Young: So that Gates management, so far as the market value of the stock was concerned, was worth a good deal to the stockholders?

Mr. Belmont: That is for you to judge.

Commissioner Clements: What was the reason or purpose of selling this $5,000,000 of stock?

Mr. Belmont: For the general purposes of the road; of expenditures that had been contracted for and were contemplated; primarily the purchase of the Atlantic, Knoxville & Northern road. But it was for general expenditures.

Commissioner Clements: Was that road purchased with the proceeds of this stock?

Mr. Belmont: Yes.

Commissioner Clements: Was that also passed to the Atlantic Coast Line in this deal?

Mr. Belmont: What was your question?

Commissioner Clements: Did that go with the Louisville & Nashville to the Atlantic Coast Line?

Mr. Belmont: The Atlantic Coast Line does not possess the Louisville & Nashville. It simply owns a portion of the stock.

Commissioner Clements: What relation has the Atlantic Coast Line to this road purchased by the Louisville & Nashville?

Mr. Belmont: As a stockholder to the extent of whatever interest the Louisville & Nashville has in it. The Louisville & Nashville own it.

Commissioner Clements: That is all.

Mr. Stetson: Has the Atlantic, Knoxville & Northern any physical relation with the Atlantic Coast Line?

Mr. Belmont: None whatever.

Mr. Stetson: The Atlantic, Knoxville & Northern is a road running from Knoxville north into Kentucky?

Mr. Belmont: Yes, sir.

Mr. Stetson: And is hundreds of miles away from the Atlantic Coast Line?

Mr. Belmont: Yes, sir.

Mr. Stetson: And has no relation by competition or otherwise?

Mr. Belmont: No, sir.

Mr. Baxter: Mr. Belmont, with reference to the disposition of the proceeds of the five millions of stock authorized to be sold, I will ask you whether the Louisville & Nashville Railroad, prior to that time, had a large corps of engineers out on the St. Louis division and other divisions lowering grades, and the company was cutting a tunnel under Baker's Hill, involving the expenditure of millions of dollars?

Mr. Belmont: Yes, sir; there were large expenditures being made on the road in addition to the purchase of the Atlantic, Knoxville & Northern; and this sale of stock was for general purposes.

Mr. Baxter: Did the issuance or sale of that five million of stock that has been referred to have the slightest relation to Mr. Gates in any shape, form or fashion?

Mr. Belmont: No relation whatever.

Mr. Baxter: Or to the Atlantic Coast Line?

Mr. Belmont: None whatever.

Mr. Stetson: Is it not a fact, Mr. Belmont, that in March, 1902, there had been an unexpected and gratifying advance in the value of the stock of the Louisville & Nashville, so that its Board of Di-

rectors then thought it was a good way to raise the money for its general business purposes—by the issuance of this stock?

Mr. Belmont: Yes, sir; certainly.

Commissioner Clements: Were any of the obligations of the road that was purchased retired?

Mr. Belmont: None whatever—do you mean of the Atlantic, Knoxville & Northern?

Commissioner Clements: Yes, sir.

Mr. Belmont: No, sir; the stock and bonds in the treasury were bought.

Commissioner Clements: It remains the same?

Mr. Belmont: Yes, sir; exactly.

The Chairman: Is the examination of Mr. Belmont concluded?

Mr. Young: It is by complainants.

Mr. Stetson: Then it is by me.

Mr. Belmont was thereupon excused.

GEORGE W. PERKINS,

a witness called on behalf of complainants, having been duly sworn, testified as follows:

Mr. Pratt: Mr. Perkins, have you any business connection or relation to the firm of J. P. Morgan & Co.

Mr. Perkins: Yes, sir; I am a member of the firm.

Mr. Pratt: How long have you been connected with that firm?

Mr. Perkins: Something over two years.

Mr. Pratt: If you have no objection, we will have you state the names of all the members of that firm.

Mr. Perkins: I do not know that I can state them all. I will state them as far as I can: Mr. Morgan, Mr. Steele, Mr. Stotesbury, Mr. Thomas, Mr. Bodwin, Mr. Hamilton, Mr. Whitney, Mr. Paul, and Mr. Robinson.

Mr. Stetson: Mr. Jack Morgan?

Mr. Perkins: Mr. J. P. Morgan, Jr. Many of these partners live in Philadelphia and London. If you want the New York partners, I will give them separately.

Mr. Pratt: Yes, sir; please do that.

Mr. Perkins: Mr. Morgan, Mr. Steele, Mr. Hamilton, Mr. Whitney, Mr. Bodwin, and myself.

Mr. Pratt: If any or all of those members have any business relation or connection with the Southern Railway Company please

give the names of those that have such connection and state in what way they are so connected.

Mr. Perkins: Mr. Steele is a director in the road. Mr. Morgan is a member of the voting trust.

Mr. Pratt: You mean a member of the voting trust of the Southern Railway Company?

Mr. Perkins: Yes, sir.

Mr. Pratt: Do you mean that Mr. Steele is a director of the Southern Railway Company?

Mr. Perkins: I do, sir.

Mr. Pratt: Give the names of all the members of the voting trust of the Southern Railway?

Mr. Perkins: I do not know that I can give them all, but my recollection is that they are Mr. Morgan, Mr. Lanier and Mr. Baker.

Mr. Stetson: That is all of them.

Mr. Perkins: Mr. Stetson says that is all.

Mr. Pratt: Has Mr. Lanier any connection with the firm of J. P. Morgan & Co.?

Mr. Perkins: Not the slightest.

Mr. Pratt: If he has any business at all, what is his business?

Mr. Perkins: Banker.

Mr. Pratt: Now, if any of the members of the firm of J. P. Morgan & Co. have any business connection with the Atlantic Coast Line Company give the names of those who have such business relations or connections?

Mr. Perkins: Do I understand that you mean in the same relation that you have mentioned the Southern Railway?

Mr. Pratt: Any business relation with the Coast Line Co. as officers or agents or managers of that company,—directors or otherwise?

Mr. Baxter: With the Coast Line Railroad Company?

Mr. Pratt: With the Coast Line Company first.

Mr. Perkins: We have no connection of that nature in any shape, form or manner.

Mr. Pratt: Have any of the members of your firm any business connection with the Coast Line Railroad Company? If so, give us their names and state in what way they are connected, if at all?

Mr. Perkins: We have no such connection, in any shape, form, or manner.

Mr. Pratt: Have you any connection with either the Southern,

Coast Line Company, or the Coast Line Railroad Company? Have you had any business connection with them?

Mr. Perkins: Personally do you mean, sir?

Mr. Pratt: Yes, sir.

Mr. Perkins: None whatever.

Mr. Pratt: Do you know anything personally of the organization of the Southern Railway Company—how it was organized?

Mr. Perkins: No, sir; I do not.

Mr. Pratt: Do you know anything personally of the organizaance with the general condition of the country in its topography and history whether the Southern Railway Company and the Louisville & Nashville and the Atlantic Coast Line are competitors in the Southern field as carriers of freight and traffic?

Mr. Perkins: Will you please repeat the question?

The question was repeated by the stenographer.

Mr. Perkins: I clearly understood from conferences with railroad men and our attorneys, who had made a careful study of the situation that the Southern Railway and the Louisville & Nashville were parallel and competing lines, and as to the Atlantic Coast Line and the Louisville & Nashville that they were not parallel and competing lines.

Mr. Pratt: Do you know that the Coast Line Railroad Co. has been consolidated with, or that it in some way controls the operation of the system known as the Plant System?

Mr. Perkins: I have been so informed.

Mr. Pratt: Do you know the terminal points, north, south, east and west of the Plant System?

Mr. Perkins: I do not.

Mr. Pratt: Do you not know that the Plant System is a competitor of the L. & N. System in the handling of freight and passengers?

Mr. Perkins: I do not.

Mr. Pratt: In the State of Florida?

Mr. Perkins: I believe it is not.

Mr. Pratt: Do you not know that the L. & N. System has important connections and terminal points in the State of Florida?

Mr. Perkins: I do not know that.

Mr. Pratt: And that the Plant System has also important lines and terminal points in the State of Florida by which it is made a competitor of the L. & N. System?

Mr. Perkins: I know from general knowledge that the Plant

System operates in Florida. But as to all of those questions I can not answer as a technical railroad man.

Mr. Pratt: Do you know that the L. & N. Railroad Co. is a carrier of freight, transports large quantities of cotton and tobacco over its connections and connecting lines in the State of Florida to a line of steamships which go from Tampa Bay to Europe carrying large quantities of cotton, tobacco and other freight; in that respect it is a competitor of the Plant System in the State of Florida?

Mr. Perkins: I do not know the nature of the freight carried by the Louisville & Nashville Railroad.

Mr. Pratt: Then you do not know personally anything of the competitor between the L. & N. Railroad and the Plant System as carriers of freight and passengers through the State of Florida?

Mr. Perkins: Not personally, but from a very careful opinion from information taken from people that I believe know.

Mr. Pratt: Please state what you know. Are you acquainted with Mr. J. W. Gates?

Mr. Perkins: Yes, sir.

Mr. Pratt: It appears in evidence in this case that he secured control of 306,000 shares of the capital stock of the Louisville & Nashville Railroad Company. Do you know of the circumstances under which he secured that stock, and, if so, please explain it, and if there was any inducement for him to do so, state the inducement so far as you know or have information of it.

Mr. Perkins: I first learned of the acquisition by Harris, Gates & Co. and associates of a large block of the stock of the Louisville & Nashville Road some time in April by the general disturbance caused in the market by their purchases of this stock, which practically created a corner and was about to cause a very serious disturbance in the market. Mr. Gates told me that he acquired the stock as an investment to dispose of in such way as he best could and that it was for sale. We entered into negotiations with him for the stock.

Mr. Pratt: I have not gotten up to that point yet.

Mr. Perkins: I think I have not quite answered your question. (Continuing) This was the first intimation that I had or any one in our firm, and, so far as I know, any one else interested in the general situation, that Mr. Gates was acquiring or had acquired any of this stock.

Mr. Pratt: Before the purchase of that stock by Mr. Gates is

it not true that the Louisville & Nashville Railroad Co., acting through its board of trustees or directors, and the Southern Railway Co., acting through its president and directors, had purchased the capital stock and secured control of the management of a railroad known as the Chicago, Indianapolis & Louisville Railroad, called the Monon system?

Mr. Perkins: Will you please state the question again? I am not sure that I understand it.

Mr. Pratt: Before the purchase of that stock—

Mr. Stetson: Let the stenographer read it.

The question was repeated by the stenographer, as follows:

"Before the purchase of that stock by Mr. Gates is it not true that the Louisville & Nashville Railroad Company, acting through its board of trustees or directors, and the Southern Railway Company, acting through its president and directors, had purchased the capital stock and secured control of the management of a railroad known as the Chicago, Indianapolis & Louisville Railroad, called the Monon system?"

Mr. Perkins: It is not true.

Mr. Pratt: Did they secure control of that after the purchase of that stock by Mr. Gates? Did these roads secure the control of this road after the purchase of that stock or before the purchase of that stock by Mr. Gates?

Mr. Perkins: The Louisville & Nashville and Southern Railways secured control of the Monon system after J. P. Morgan & Co. had made their arrangements with Mr. Gates for the 306,000 shares of Louisville & Nashville stock referred to, and the matter, so far as I know, as to the acquisition of the Monon by those two roads was never discussed prior to that time.

Mr. Pratt: Then, to make the matter clear, the Louisville & Nashville Railroad Company and the Southern Railway Company secured control of the Monon after J. P. Morgan & Co had secured an option on the stock in the hands of Mr. Gates?

Mr. Perkins: That is correct, sir.

Mr. Pratt: Well, having secured control of the stock, does it not naturally follow that they could control the management of that line of railroads?

Mr. Perkins: Of the Louisville & Nashville?

Mr. Pratt: No; of the Monon.

Mr. Perkins: We had not secured a majority of the stock of the Monon.

Mr. Pratt: I will make myself plain to you.

Mr. Perkins: Thank you.

Mr. Pratt: If the Louisville & Nashville Railroad Co. and the Southern Railway Co. had secured control of the stock of the railroad company known as the Monon system, does it not follow, in railroad management that they could control the policy of that road in the traffic business, both as to freight and passengers?

Mr. Perkins: That the Louisville & Nashville, or the Southern?

Mr. Pratt: I mean that these two systems that bought it could.

Mr. Perkins: Could control the Monon?

Mr. Pratt: Yes, sir.

Mr. Perkins: They bought it, and I suppose they could control it in the sense you mean, if I understand that sense; that is, they owned a majority of the stock.

Mr. Pratt: They could control its traffic?

Mr. Perkins: No; not that they could control its traffic, but they could use it jointly for their traffic.

Mr. Pratt: Has the Southern Railway an outlet from Louisville as a carrier of freight and passengers?

Mr. Perkins: I really do not know, sir.

Mr. Pratt: Do you not know that they have a line of railway—that they have a Southern railway in Kentucky leading south from Louisville and in connection with other lines into Tennessee?

Mr. Perkins: No, sir; I do not know as to that.

Mr. Pratt: Don't you know that the Louisville & Nashville Railroad Company has its main line south from Louisville to Nashville and thence connecting with other lines to the seaboard and to New Orleans?

Mr. Perkins: I can not answer as to these technical lines of the Southern roads because I do not know the details. That is not my line of business—as to where each branch of a road runs; I am not familiar with that. If you will put it in any other way so that I can answer, I will be glad to do so.

Mr. Pratt: Do you not know that the Monon System had, and with this purchase now have, important terminal facilities in the city of Louisville as a part of the Monon System?

Mr. Perkins: I do not know. Would you like to have me tell you why I understand—

Mr Pratt: Answer the question please.

Mr. Perkins: I can tell you why the Southern and the Louis-

ville & Nashville bought the Monon. I will be pleased to tell you that because that I do know about.

Mr. Pratt: Do you not know also that there is—

Mr. Baxter: If your question calls for an answer that the witness cares to give, let him give it.

Mr. Pratt: I have no objection to his giving any answer that is relevant.

Mr. Baxter: Set yourself right, Mr. Perkins.

Mr. Perkins: After J. P. Morgan & Co. had obtained an option from Harris, Gates & Co. and others for the Louisville & Nashville stock we found that the Monon stock could be bought on what was considered favorable terms. The Southern Railway had in the past considered getting into Chicago. The Louisville & Nashville had also considered getting into Chicago. We submitted to both roads a plan by which we thought the Monon road could be acquired by the Louisville & Nashville and the Southern Railway jointly, and after considerable discussion by both roads they decided to jointly acquire a majority of the stock of the Monon under an offer which was made, and which I have brought with me this morning and which Mr. Stetson has and will be glad to give you if you would like to have it.

Mr. Pratt: I will ask you this question: now, don't you know from your acquaintance with railroads and the system of railroads entering the city of Louisville that there is a line of railway known as the Illinois Central leading southwest from Louisville and running, with connecting lines, to the seaboard and to New Orleans, and that that is a very active competitor of the Louisville & Nashville and the Southern Railway for Southern freight and traffic from the city of Chicago and other points north?

Mr. Perkins: All of these questions can be answered by my saying to you that I have not the information that you suggest I have, namely, don't I know as a railroad man these things. My work in connection with all this is as a banker and not as a railroad man. I know very little about the interlacing of the roads, technically, as roads.

Mr. Pratt: But you handle the securities of these railroads,—the Southern and the Monon System and the Air Line System.

Mr. Perkins: Not the Air Line System.

Mr. Pratt: Of the Southern and the Monon Systems.

Mr. Perkins: Yes, sir.

Mr. Pratt: Your firm handled the securities of those two systems?

Mr. Perkins: Yes; of most all systems.

Mr. Pratt: In that way you became acquainted in a general way with the management of the railroads?

Mr. Perkins: Yes, sir; in a general way with the management, but not with the actual point on the map or the ground where the rails are laid down.

Mr. Pratt: Now, is it not true, Mr. Perkins, that the Southern Railway Company has acquired a majority of the stock of the railroad leading from Louisville to St. Louis called the Louisville, Evansville and St. Louis Railroad, properly called the Air Line Railroad, and that the Southern Railway Company now controls that railroad?

Mr. Perkins: I do not know, sir. If you will bear in mind that I have only been in this business two years and that many of these railroads were acquired before that time you will see that I do not know.

Mr. Pratt: You do not know now that the Southern Railway and the Louisville & Nashville Railroad control the management of the Monon leading to Chicago and that the Southern controls the Air Line leading from Louisville to St. Louis and that they contrfiol the shipment of freight and the transportation of passengers coming over those lines that go south, thereby defeating the Illinois Central from getting that business or from getting its part of the patronage and virtually destroying competition between those lines?

Mr. Perkins: I do not know that. All I know is that I conducted the negotiations by which the Louisville & Nashville Railroad and the Southern Railway acquired the stock they now hold in the Monon road.

Mr. Pratt: When your firm entered into this deal with Mr. Gates of the firm of Harris, Gates & Co., the Southern Railway and the Louisville & Nashville Railroad Company had control of a majority of the stock of the Monon and the Air Line systems? That is true, is it not?

Mr. Perkins: Do you wish to introduce that as testimony?

Mr. Pratt: I ask you if that is not true?

Mr. Perkins: I have already denied that as to the Monon. As to the other road, I do not know anything about that.

Mr. Pratt: You do not deny that the Southern Railway and

the L. & N. R. R. Co. had secured jointly a majority of the stock of the Monon before the purchase of this stock of the Louisville & Nashville railroad from Gates & Co?

Mr. Perkins: I have denied that twice.

Mr. Pratt: You have?

Mr. Perkins: Yes, sir.

Mr. Pratt: I want to get you exactly right.

Mr. Perkins: I have added that they did acquire the Monon not only after Gates had purchased the stock, but after J. P. Morgan & Co. had taken an option from Gates for the stock.

Mr. Pratt: I was a little mistaken. You have it all right.

Mr. Perkins: Thank you.

Mr. Pratt: Now, you say that the purpose of J. P. Morgan & Co in purchasing this stock—that is, the main purpose—was to guide the market and the general condition of business?

Mr. Perkins: Do you refer now to the Louisville & Nashville stock?

Mr. Pratt: Yes, sir. When you bought that stock, or took an option, at least, on that stock from Harris, Gates & Co.?

Mr. Perkins: Yes, sir; that was our one and controlling motive.

Mr. Pratt: And you paid how much for the stock?

Mr. Perkins: Would you like to know what our arrangement was with Mr. Gates? I can not give it in a word. We made an agreement with Harris, Gates & Co. and his associates to buy 102,000 shares of the stock at 130 and took an option good until some time in the fall—I do not recollect the exact date—

Mr. Stetson: The date is stated in the contract.

Mr. Perkins: (Continuing) And took an option on 204,000 shares at 150, with a further agreement that in any disposition of this stock, whatever plan might be devised, Harris, Gates & Co. and associates should first have the right to participate in the plan, but in the event of their not desiring so to do we had the right to take the 204,000 shares for cash at 150 or to turn the stock back to them.

Mr. Stetson: They had the right to call it.

Mr. Perkins: They had the right to take the stock from us if we did not do either one. Does that answer the question?

Mr. Stetson: Are the terms any different from those stated in the paper?

Mr. Perkins: I have tried to state the terms as in the paper.

Mr. Pratt: I object to counsel making suggestions to the witness.

Mr. Stetson: I asked him to state if the terms are different from those stated in the paper. I will be called to order by the court, and not by the attorney general of Kentucky.

Mr. Pratt: The attorney general of Kentucky has as many rights as other counsel.

The Chairman: There does not seem to be any necessity for a ruling by the commission. The question has been answered and you may ask another.

Mr. Perkins: I should like to say that the only understanding with Harris, Gates & Co. is covered in the contract which you have. There has been no supplementary understanding, written or verbal. I have tried in a word to give the nubbings, so to speak, of that contract.

Mr. Pratt: Mr. Perkins, in these negotiations with the Coast Line did you seek that company or did they seek you, in the purchase of that stock?

Mr. Perkins: We sought them.

Mr. Pratt: Are you prepared to give any reason why you sought them?

Mr. Perkins: Because we thought it was the most natural place, for the Louisville & Nashville stock and the best place in the interest of the stockholders of the Louisville & Nashville, and of what we call the general situation.

Mr. Pratt: Did you think a company so remotely located could be interested in securing control of the majority of the stock of a corporation that was not a competitor in business?

Mr. Perkins: Will you state that again?

Mr. Pratt: Did you think that a company so remotely situated and not a rival or competitor in business could be induced to purchase a majority of the Louisville & Nashville Railroad Company.

Mr. Perkins: We thought that as the Atlantic Coast Line could properly purchase this stock we could show them it was to their advantage from a business point of view so to do.

Mr. Pratt: And you sought that company and made this negotiation, and they incumbered their property to the extent of fifty million dollars for the purchase of this stock?

Mr. Perkins: They bought the 306,000 shares of stock for thir-

ty-five million dollars of bonds, ten million in cash and five million in their stock.

Mr. Pratt: In leading up to this transaction, what did you say to the Coast Line Company and what did they say to you?

Mr. Perkins: May I ask if you would like that in one answer? The negotiations cover three or four months.

Mr, Pratt: You can answer the question in substance.

Mr. Perkins: Kindly ask the question again.

The question was repeated by the stenographer as follows:

"In leading up to this transaction what did you say to the Coast Line Co. and what did they say to you?"

Mr. Perkins: It is a pretty difficult thing to sum up the negotiations, covering three or four months, in one answer.

The Chairman: We understand Mr. Pratt's question to mean with whom did you conduct these negotiations?

Mr. Perkins: With Mr. Walters.

The Chairman: What were the principal matters discussed in these negotiations?

Mr. Perkins: The principal matter discussed was—

The Chairman: I take it the attorney general does not care for all of the conversation.

Mr. Pratt: No, sir; I simply want to ascertain the inducement for the purchase of this stock.

The Chairman: It appears that you sought the Atlantic Coast Line Railroad Company as a probable purchaser from your point of view and as a desirable purchaser of this property?

Mr. Perkins: Yes, sir.

The Chairman: What was your argument or inducement to that company to become the purchaser of that stock?

Mr. Perkins: Our first thought in connection with it was that the stock, so to speak, was in the air. We had an option on it. Harris, Gates & Co. and others owned it. We were extremely anxious as to where the control of this road should finally land, because if it remained in the hands of Harris, Gates & Co. nobody knew what they would do with the road, and they had clearly stated to us that it was their idea to pay very large dividends and sell the stock at the highest possible price in the market or make other disposition of it the nature of which we were not aware of. We felt that in having an option for a certain number of months on 306,000 shares, which was a majority, we owed a great deal to the interest of the minority stockholders; that the road had been

admirably managed in the past, and that if it could continue in as good or better hands in the future interests of all the stockholders would be best safeguarded. We knew that the Southern Railway —in which we were largely interested, could have nothing whatever to do with it; that there were naturally but two places for it to go—either to the Atlantic Coast Line or to the Seaboard. Our first negotiations were with Mr. Walters, and after long negotiations I am glad to say we were successful.

Mr. Pratt: Was there anything said during those negotiations about the relations they would sustain to the Southern Railway in the management of the system?

Mr. Perkins: None whatsoever, except that there could be no relations.

Mr. Pratt: They had never been competitors in the Southern trade—the Southern System and the Coast Lines?

Mr. Perkins: How do you mean?

Mr. Pratt: Have they ever been competitors for business in the trade in the South? I mean the Atlantic Coast Line Railroad Company and the Southern Railway Company.

Mr. Perkins: They are competitors for trade, as I am informed.

Mr. Pratt: They are and have been competitors?

Mr. Perkins: I am so informed and so believe.

Mr. Pratt: You never made any proposition to the Illinois Central Railroad Company to take this stock or any part of it?

Mr. Perkins: We did not.

Mr. Pratt: That is a very large system, operating through the South, is it not?

Mr. Perkins: Yes, sir; I believe it is.

Mr. Pratt: Did you make any proposition to the 'Frisco people, whose lines run to Birmingham?

Mr. Perkins: No, sir; I discussed this question with many railroad men as to what would be an advisable thing to do in the interests of what we call the general situation, in the interests of harmony.

Mr. Pratt: You thought it would be best to put it into the hands of the Coast Line?

Mr. Perkins: Yes, sir; we did.

Mr. Pratt: Was this Coast Line Company created a corporation before the purchase of this stock or since?

Mr. Perkins: Before.

Mr. Pratt: It does not operate any railroad itself, does it?

Mr. Perkins: Which company do you refer to?

Mr. Pratt: The Atlantic Coast Line Company does not operate a railroad itself?

Mr. Perkins: You refer to the "Company?"

Mr. Pratt: Yes, sir.

Mr. Perkins: I do not know as to the organization of that company, as to what they do in that respect.

Mr. Pratt: Does the Coast Line Railroad Company that now holds this stock?

Mr. Perkins: Yes, sir.

Mr. Pratt: You may examine. We will rest here.

Mr. Baxter: Mr. Perkins, it has been stated in the newspapers as a rumor that Gates & Co. in acquiring a majority of the Louisville & Nashville stock secretly, but really, acted as the agent of Morgan & Co. Was that rumor true?

Mr. Perkins: There is absolutely no truth in it in any shape or form or manner.

Mr. Baxter: It was also stated as a rumor at the time in the newspapers that Morgan & Co. employed Gates & Co. simply to acquire a majority of the Louisville & Nashville stock, with the original purpose of turning that majority over to the Southern Railway. Is that true?

Mr. Perkins: There is no truth whatever in that statement or rumor.

Mr. Baxter: Did the acquisition of the majority of the stock of the Monon Company by the L. & N. R. R. and the Southern Railway have any relation to or connection with the purchase of a majority of the stock of the Louisville & Nashville Railroad by the Atlantic Coast Line Railroad Company?

Mr. Perkins: Not in the slightest degree. They were absolutely separate and distinct transactions.

Mr. Baxter: It has been stated in the pleadings in this case that there is, or has been, in existence a contract, combination, agreement, or understanding, either expressed or implied, oral or written, to the effect that the Atlantic Coast Line Railroad and the Louisville & Nashville Railroad and the Southern Railway could be controlled by some community of interest or other management. I wish to know whether you have any knowledge or information or belief as to the existence of any such combination.

Mr. Perkins: There is not, and never has been, any such plan

or idea. No such agreement was ever suggested. None such exists, oral or in writing.

Mr. Baxter: That is all I wish to ask.

Mr. Perkins: If I can make it any stronger, I would like to do it.

Mr. Stetson: Prior to the sale to the Atlantic Coast Line of the Louisville & Nashville Railroad stock under the agreement of October, 1902, did the firm of J. P. Morgan & Co. have any relation to or interest in the Atlantic Coast Line Co. or the Atlantic Coast Line Railroad Co?

Mr. Perkins: Not in the slightest degree.

Mr. Stetson: Since the completion of these transactions have the firm of J. P. Morgan & Co. become fiscal agents of the Atlantic Coast Line Company or of the Atlantic Coast Line Railroad Company?

Mr. Perkins: They have not.

Mr. Stetson: Have they become in any degree the bankers of either company?

Mr. Perkins: No, sir; they have not; only so far as we underwrote the ten million dollars which the Atlantic Coast Line provided to pay for the Louisville & Nashville stock, as heretofore spoken of.

Mr. Stetson: Was it a matter to you of absolute indifference so far as representing the interests of J. P. Morgan & Co. or the Southern Railway, or so far as representing any interests of J. P. Morgan & Co. except as connected with the general market conditions and better commercial condition as to who got this road?

Mr. Perkins: Yes, sir; except as we felt a very great moral responsibility to the majority and minority stockholders of the Louisville & Nashville Railroad we had no other interest in it.

Mr. Stetson: You have stated that Messrs. Gates & Co. told you that it was their intention in case they held this stock to pay large dividends and run the price of the stock up. Why would that not have been to the interest of the minority stockholders whom you were endeavoring to protect.

Mr. Perkins: It might have been for a year, but it would have been very disastrous after that. We are committed against a temporal policy in the management of any property.

Mr. Stetson: Is the paper I show you now under date of May 20, 1902, the circular that was issued by your firm to the stockholders of the Monon Railroad? (Handing to the witness.)

Mr. Perkins: That is the circular.

(The same is hereto attached and marked exhibit No. 1, G. W. Perkins.)

Mr. Stetson: Is the paper which I now show you, being an agreement dated the same day, May 20, 1902, between the Louisville and Nashville Railroad Company, the Southern Railway Company, and J. P. Morgan & Co., the agreement in pursuance of which this circular was issued by your firm?

Mr. Perkins: Yes, sir; it is.

(The same is hereto attached and marked Ex. No. 2, G. W. Perkins.)

Mr. Stetson: Has there been any other agreement between your firm and the Louisville & Nashville Railroad Company or the Southern Railway Company with reference to the Monon purchase or with reference to any other property?

Mr. Perkins: None whatsoever.

Mr. Stetson: I offer those papers in evidence.

Mr. Young: There is no objection.

Mr. Stetson: I think that is every paper we have.

Commissioner Clements: Do the papers show the plan by which the Monon was secured?

Mr. Perkins: Yes, sir.

Commissioner Clements: That was by purchase of stock?

Mr. Perkins: Yes, sir.

Commissioner Clements: Does it show whether there was any stock or bonds issued for that purpose?

Mr. Stetson: Yes, sir; there is the whole thing (referring to papers filed) You have all the papers. You have the agreement, the form of bond and the mortgage. That is all there is to it. We have nothing else to show. It was purchased by the issue of joint bonds.

Commissioner Clements: Was anything retired in consequence of that in the way of stocks and bonds?

Mr. Stetson: No, sir; everything is standing. There was merely a change of ownership.

Commissioner Clements: Does it increase the bonds?

Mr. Stetson: By the Southern and Louisville & Nashville, but not by the Monon.

Commissioner Clements: And there is no decrease of the Monon's?

Mr. Stetson: No, sir; not at all. It is a purchase from the stockholders; not from the company.

Commissioner Clements: What was the gross increase of bonds?

Mr. Perkins: Of the Louisville & Nashville and the Southern?

Commissioner Clements: Yes, sir.

Mr. Perkins: I do not recollect the amount; there was so many of those transactions.

Commissioner Clements: It is all set out in those papers?

Mr. Perkins: Yes. sir; it is all set forth in this agreement.

Commissioner Yeomans: What was the Louisville & Nashville stock worth at the time Mr. Gates purchased those 306,000 shares?

Mr. Perkins: My impression is that, as has been stated just before he commenced the purchase of the stock it was somewhere around par; up to 110.

Commissioner Yeomans: What did he get for it?

Mr. Perkins: He got 150 for it.

Mr. Stetson: Not for all.

Mr. Perkins: He got 130 for 102,000 shares, and 150 for 204,000 shares. My impression is that Mr. Gates paid on an average of 125 to 130 for the stock. That is my impression. He will have to tell you that.

The Chairman: For that which he sold at 150 he took in payment not money—

Mr. Perkins: Yes, sir.

The Chairman: But bonds and stocks?

Mr. Perkins: No; he took money at 130 for 102,000 shares and money at 150 for 204,000 shares.

Mr. Stetson: Mr. Perkins, the questions of the Commission remind me of the question that was asked of Mr. Belmont, namely as to whether the price of the stock had not advanced after the purchase by Mr. Gates and before the purchase by J. P. Morgan & Co. I will ask you now if the largest advances did not come after it was known that J. P. Morgan had got this option?

Mr. Perkins: That is my impression.

Mr. Stetson: How high did that stock run after the purchase by J. P. Morgan & Co?

Mr. Perkins: To 160, I think.

Mr. Stetson: It was higher after the purchase by J. P. Morgan & Co. than before?

Mr. Perkins: Yes, sir; and it is higher now than it was before Mr. Gates bought it.

Commissioner Clements: What did the Atlantic Coast Line pay for it per share?

Mr. Perkins: For the 306,000 shares $35,000,000 in bonds, $10,000,000 in cash, and $5,000,000 in their stock.

Commissioner Clements: What did that amount to per share?

Mr. Perkins: It would be very difficult to state. It would be difficult to tell what the stock and bonds are worth.

The bonds and stock have not been marketed yet.

The Chairman: It would appear from the testimony of yesterday that money was raised from the sale of the Atlantic Coast Line stock at 125.

Mr. Perkins: Yes, sir.

Mr. Calwallader: That was the way the cash was paid.

Mr Stetson: By the sale of $8,500,000 of stock at 125.

Mr. Elliott: $10,000,000 was provided by the sale of $8,500,000 of our stock.

The Chairman: Assuming the bonds to be worth par and the stock of the Atlantic Coast Line Railroad Company to be worth at least what the stockholders paid for it—125—adding to that the $10,000,000 in cash, you can very readily determine what was the normal value of the Louisville & Nashville Railroad stock which was purchased.

Mr. Perkins: You could, sir.

Mr. Stetson: But, your honor, you would still have to know the price these bonds would bring that are not marketed.

Mr. Perkins: We paid Mr. Gates in cash, actual money. We took the $35,000,000 in bonds. We paid him at the rate of 150 per share for 204,000 shares, and 130 per share for 102,000 shares.

The Chairman: If I understood the testimony and the various papers introduced yesterday, Gates & Co. and various holders of the stock when they gave the option to Morgan & Co. retained the right to share in the disposition that Morgan & Co. might make of the stock, which I took to mean that they might have their proportionate share of the securities which Morgan & Co. would receive from the sale of that stock, or had the option of taking cash, and I got the impression yesterday that they took their share of securities.

Mr. Perkins: No; we offered them securities. We told them what the plan was, but they declined to take the securities. They received 150 in cash for 204,000 shares and 130 for 102,000 shares. We gave them the actual money and have kept the securities.

Mr. Stetson: One of the papers introduced here yesterday, which I have handed to counsel, shows exactly this whole thing as to these securities of the Atlantic Coast Line paid by them for this stock; namely, $35,000,000 of bonds, $10,000,000 of cash, and $5,000,000 of their stock. The whole of this thing was offered to Gates and Co. And they declined to take it, but took cash instead, which would indicate that in their opinion 150 in cash was worth more than these securities.

The Chairman: On the assumption that these bonds were worth par and that the stock was worth 125, the Louisville & Nashville sold apparently for about 166 or 167.

Mr. Stetson: It would so appear, your honor, on that assumption, but you have this test, that the people who own two-thirds of it would not take it at 150. They declined it. It was offered to them and they would not take it.

The Chairman: It appears from the statements of Mr. Perkins and counsel that Gates & Co. elected to take cash at 150 rather than their share of the securities which the Atlantic Coast Line Railroad Company issued to purchase the stock?

Mr. Perkins: Yes, sir; that is correct.

The Chairman: If there are no further questions to be asked of Mr. Perkins, he will be excused.

Mr. Perkins was thereupon excused.

GEORGE F. BAKER,

a witness on behalf of the complainant being duly sworn testified as follows:

Mr. Young: Mr. Baker, you are president of what national bank?

Mr. Baker: The First.

Mr. Young: How long have you been president?

Mr. Baker: Twenty years or more.

Mr. Young: You are one of the voting trustees of the Southern Railway Company?

Mr. Baker: Yes, sir.

Mr. Young: How did you come to be such voting trustee?

Mr. Baker: I was appointed the same as the others.

Mr. Young: Through your relations with J. Pierpont Morgan & Co. was it not?

Mr. Baker: Yes, sir.

Mr. Young: You were put in at their suggestion. On the 27th of August, 1902,—I suppose you are familiar with it—you signed a circular issued to the stockholders of the Southern Railway Company and it was sent out in the name of yourself and your co-voting trustees. Did you compose any part of that circular?

Mr. Baker: I did not. I was in Europe at the time.

Mr. Young: Do you know any of the facts that led up to the issue of that circular?

Mr. Baker: No.

Mr. Young: I will read a sentence, and ask if you know anything of the circumstances or facts which caused this statement to be made to the stockholders of the Southern Railway.

"Therefore we do not hesitate to state that, in our opinion, it is decidedly for the interests of the stockholders of the Southern Railway to protect their property by an extension of the voting trust until negotiations now pending for the further development and strengthening of its lines shall be settled beyond any risk of being overturned.

What did you mean by that?

Mr. Baker: My understanding of that was that Mr. Spencer and the directors were perfecting the road and had done a great deal to it already, bringing it up very largely to an increased valuation. The work was not completed and is not completed, and it was very desirable to continue it in the same channels.

Mr. Young: What did you mean by this: "And until the completion of other negotiations now pending in relation to transportation interests in the Southern States which have an important bearing upon the interests of the Southern Railway Company."

Mr. Baker: I do not know the exact meaning.

Mr. Young: Who did you authorize to sign your name to this?

Mr. Baker: I think Mr. Morgan—the other trustee. Mr. Morgan and Mr. Lanier.

Mr. Young: Did they communicate with you in writing?

Mr. Baker: It was done by cable. They offered to send me the whole circular, but I did not think it necessary.

Mr. Young: Did you make any investigation of the figures that entered into the inducements held out to the stockholders of the Southern Railway to continue this voting trust?

Mr. Baker: No more than I stated to you.

Mr. Young: Personally you know nothing about the conditions

which suggested this circular to the stockholders in your name, being abroad, and you made no investigations?

Mr. Baker: I did know something of the conditions. I did not know anything of the forming and wording of the circular.

Mr. Young: You did not know anything about any negotiations then pending which were important to the interests of the Southern Railway?

Mr. Baker: Not the particular ones.

Mr. Young: You did not know that that referred to the controlling of the Louisville & Nashville by somebody and placing it in safe hands, did you?

Mr. Baker: No, sir.

Mr. Young: Were you with Mr. Morgan and Mr. Walters abroad when they conferred about these matters?

Mr. Baker: I was not.

Mr. Young: Did you ever confer with Mr. Walters about any matter in connection with the Southern Railway or the Atlantic Coast Line railroad?

Mr. Baker: I think not.

Mr. Young: When did you return home from Europe?

Mr. Baker: The first of October.

Mr. Young: Do you know whether as a matter of fact the voting trust has been continued five years?

Mr. Baker: Do I know it?

Mr. Young: Yes, sir.

Mr. Baker: Yes, I know that.

Mr. Young: I do not think Mr. Baker knows anything on this. I do not care to ask him any more questions.

CROSS EXAMINATION.

Mr. Stetson: Mr. Baker, have you any connection with the firm of J. P. Morgan?

Mr. Baker: Not any.

Mr. Stetson: None whatever?

Mr. Baker: No, sir.

Mr. Stetson: Do you know of anything in connection with these transactions which in any way is intended or proposed to affect or diminish competition or traffic between any two railroads anywhere, anyhow?

Mr. Baker: I do not.

Mr. Stetson: That is all.

Mr. Baxter: Have you any knowledge, information or belief of the existence of any such combination or conspiracy to operate the Southern Railway, the Louisville & Nashville Railroad and the Atlantic Coast Line under some community of interest so as to stifle competition between those lines?

Mr. Baker: I have not.

Mr. Baxter: That is all.

The Chairman: If there are no further questions to be asked Mr. Baker, he will be excused.

The witness was excused.

Mr. Young: It is important to take the depositions of certain traffic managers in connection with the case. The Commission know why three of the gentlemen are not here. We desire that the Commission, if they deem it proper, enter an order allowing us such time as will suit the convenience of both parties to take the depositions of these other witnesses; there are some eight or ten of them. We think their testimony will have an important bearing on the control of the Louisville & Nashville by the Atlantic Coast Line Railroad Company.

The Chairman: You prefer to secure the testimony of witnesses familiar with the traffic situation by deposition rather than to have a later session by the Commission in Washington.

Mr. Young: Yes, sir; and if such matters should be developed by these depositions that we would like the Commission to take them up it would not be inconvenient, I suppose, for the Commission to hear anything additional we desire to lay before them. I think the depositions will include everything we will want, and we will not ask the Commission to hear any further oral testimony.

Commissioner Yeomans: Do you want a subpoena for Mr. Gates?

Mr. Young: We had a subpoena for him, but somehow it was not served. He will be at Palm Beach, Florida, shortly, I understand.

The Chairman: There is still a third course which I will suggest. If it should prove more convenient to you to examine these witnesses by deposition, it might be that some one member of the Commission would go to such place as the witnesses and counsel could conveniently assemble, taking along a stenographer and se-

curing the testimony in that way, but we are perfectly willing that you should pursue the course you suggested.

Mr. Young: We would be very glad if a member of the Commission could come to Louisville and hear the testimony.

The Chairman: We understand that there are no other witnesses that you desire to examine now?

Mr. Young: No, sir.

Mr. Baxter: I would ask counsel on the other side in setting the time and place for taking such depositions as they desire to take to please not fix any time before the first of February as I am engaged in a case in New Orleans which will occupy me until that time.

Mr. Young: We shall be glad to consult the convenience of the gentlemen on the other side.

The Chairman: Then the matter of taking further testimony may be left to such arrangements as counsel on the respective sides may make later on.

Mr. Young: Is it understood, then, that we can take the testimony of these other witnesses by deposition?

Mr. Stetson: Any way you choose. Suit yourself about that.

Mr. Young: Of course, we will consult the other side as to the time.

The Chairman: If you conclude to take the depositions before a notary, the Commission will enter an order for that purpose. With that understanding this hearing is adjourned.

At 12:45 the Commission adjourned.

Met Pursuant to Adjournment at New York, March 27, 1903.

The Chairman: Gentlemen, please give us your attention. The Commission has assigned the case of the Railroad Commission of Kentucky against the Atlantic Coast Line Company and others for further hearing at this time. Are you ready to proceed?

Mr. F. W. M. Cutcheon: If the Commission please, I would like to enter my appearance for several of the gentlemen who have been subpoenaed, namely, Mr. Edwin Hawley, Mr. F. H. Davis, Gen. T. H. Hubbard, Mr. James Byrne, Mr. G. G. Gates, Mr. J. F. Harris and Mr. John W. Gates. I will take the liberty with the permission of the Commission to arrange with counsel for the Kentucky Railroad Commission to produce the witnesses as they may be called for, as some of them have important engagements. I will have any one of them present that they desire to examine on a moment's notice.

The Chairman: The Commission is agreeable to that arrangement, provided the time is occupied with witnesses. As one of our number at least must leave by an evening train, it is desired that Mr. Gates' testimony be taken some time during the day.

Mr. Cutcheon: Mr. Gates will be here at eleven o'clock.

The Chairman: Are there any other appearances except those noted at the first hearing?

Mr. C. M. Burch: If the Commission please, I desire to enter my appearance for the Louisville & Nashville Railroad Company.

The Chairman: Whom will you call first this morning?

Mr. Young: I will call Mr. Williams.

The Chairman: Mr. Williams does not seem to be present. Is there some other witness you can call?

Mr. Young: Mr. Williams' secretary says that he is expecting him at any moment. However, we will call Mr. Hawley.

EDWIN HAWLEY,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Mr. Hawley, where do you reside?

Mr. Hawley: In New York City.

Mr. Young: What is your business?

Mr. Hawley: Railroad business.

Mr. Young: Are you in any way connected with the firm of Gates, Harris & Company?

Mr. Hawley: No, sir.

Mr. Young: What department of Railways?

Mr. Hawley: I am President of the Minneapolis & St. Louis and the Iowa Central.

Mr. Young: I will get you to state whether or not you were present at any conference in regard to the disposition of the stock of the Louisville & Nashville Railroad held by Gates, Harris & Company.

Mr. Hawley: I was.

Mr. Young: Who was present with you at those conferences?

Mr. Hawley: What particular conference do you refer to?

Mr. Young: Any in regard to this disposition of the stock of the Louisville & Nashville Railroad.

Mr. Hawley: With J. P. Morgan & Co.? Is that what you refer to?

Mr. Young: Yes, sir.

Mr. Hawley: Well, Mr. Perkins, Mr. Gates and Mr. Stetson.

Mr. Young: What was the purpose of those conferences?

Mr. Hawley: Negotiation.

Mr. Young: What did you propose to negotiate?

Mr. Hawley: The sale of the property.

Mr. Young: Did you have any interest in the Louisville & Nashville Railroad?

Mr. Hawley: I did.

Mr. Young: As a stockholder?

Mr. Hawley: Yes, sir.

Mr. Young: Who was present besides yourselves at those conferences?

Mr. Hawley: I have just mentioned them.

Mr. Young: Nobody else but those gentlemen?

Mr. Hawley: There may have been. Mr. Harris, perhaps, was present—one or two of them. Those are the principals, though.

Mr. Young: What stage had the negotiations for the sale of the property reached at the time those conferences were held? Had any steps been taken towards the sale to any particular person?

Mr. Hawley: Not with me. I think Mr. Gates had a conference with J. P. Morgan & Co.

Mr. Young: At that time did J. P. Morgan & Co. have control or an option on the stock of the Louisville & Nashville Railroad?

Mr. Hawley: They did not.

Mr. Young: Was this conference for the purpose of offering control to J. P. Morgan & Co.?

Mr. Hawley: Well, it resulted in that, yes, sir.

Mr. Young: Were conferences held with any other persons for the disposition of this stock?

Mr. Hawley: Yes, sir.

Mr. Young: With whom?

Mr. Hawley: Vermilye & Company and J. Skelton Williams.

Mr. Young: What road does J. Skelton Williams represent?

Mr. Hawley: The Seaboard Air Line.

Mr. Young: Was he present at any of these conferences?

Mr. Hawley: He was present at two or three conferences we had prior to the time we conferred with J. P. Morgan & Co.

Mr. Young: What was the purpose of this conference with Mr. Williams?

Mr. Hawley: The conference was brought about by the request of Vermilye & Company.

Mr. Young: What did Mr. Williams want to do?

Mr. Hawley: He wanted to lease the property.

Mr. Young: Did he offer to buy?

Mr. Hawley: He offered to buy at a price.

Mr. Young: What price did he offer to buy at?

Mr. Hawley: I think he offered us 130 or 135,—I have forgotten which—I think 130.

Mr. Young: On what terms did he propose to lease the property?

Mr. Hawley: On a seven per cent. guarantee.

Mr. Young: On the capital stock?

Mr. Hawley: Yes, sir.

Mr. Young: Was that the highest offer Mr. Williams ever made?

Mr. Hawley: I think so.

Mr. Young: Up to this time had any negotiations been carried on with the Atlantic Coast Line Company?

Mr. Hawley: Not to my knowledge.

Mr. Young: Who discussed the question of the disposition of the stock of the Louisville & Nashville Railroad at this conference on Mr. Gates' side?

Mr. Hawley: Mr. Gates.

Mr. Young: Who represented the firm of J. P. Morgan & Company?

Mr. Hawley: Mr. Perkins.

Mr. Young: Was any discussion had as to the purpose of disposing of the stock of the Louisville & Nashville Railroad?

Mr. Hawley: No, sir.

Mr. Young: Why were the parties so anxious to dispose of it?

Mr. Hawley: I do not know that they were.

Mr. Young: Well, they offered it to several people, did they not?

Mr. Hawley: No, sir.

Mr. Young: They offered it to Mr. Williams?

Mr. Hawley: No, sir.

Mr: Young Mr. Williams tried to buy it?

Mr. Hawley: Yes, sir.

Mr. Young: Did any body else try to buy it?

Mr. Hawley: Yes, sir.

Mr. Young: How long after this was it that J. P. Morgan & Co. secured an option on the property?

Mr. Hawley: Very shortly afterwards, within three or four days.

Mr. Young: Had you any thing to do with securing that option?

Mr. Hawley: No more than I was an interested party, that was all.

Mr. Young: You need not answer this question if you do not want to. To what extent were you interested?

Mr. Hawley: To the extent of 100,000 shares.

Mr. Young: Were you called in by Morgan & Company, into this conference?

Mr. Hawley: I was.

Mr. Young: Was any discussion had then as to the proper persons from the standpoint of J. P. Morgan & Co. that this property should be placed with?

Mr. Hawley: No, sir.

Mr. Young: Was the Southern Railway Company ever mentioned in any of these negotiations?

Mr. Hawley: No, sir.

Mr. Young: Was anybody there interested in the Southern Railway Company, so far as you knew?

Mr. Hawley: No, sir.

Mr. Young: Did you unite in any way in the option you subsequently obtained on the stock of Gates, Harris & Company.

Mr. Hawley: Why, I agreed to go along with Harris, Gates & Company, conditioned upon a satisfactory agreement being reached as to the control of the stock. I had no connection with Harris, Gates & Company in the matter whatsoever.

Mr. Young: You were an independent stockholder and were called into the conference on account of the stock you controlled or held yourself?

Mr. Hawley: Yes, sir.

Mr. Young: Do you know whether or not you were present at all the conferences between Harris, Gates & Company and J. P. Morgan & Company in regard to the disposition of this stock?

Mr. Hawley: I do not know that I was; still, I might have been.

Mr. Young: In these discussions, was anything said at all, either directly or indirectly about the Southern Railway Company?

Mr. Hawley: No allusion was made to any road whatsoever.

Mr. Young: Did you ever discuss it with Harris, Gates & Company yourself outside of these conferences?

Mr. Hawley: I probably did.

Mr. Young: With which one of the firm?

Mr. Hawley: With Mr. Gates.

Mr. Young: In those discussions was anything said about the Southern Railway Company or its relations with the Louisville & Nashville?

Mr. Hawley: No, sir; that was a matter we had nothing to do with.

Mr. Young: That is all.

The witness was excused.

The Chairman: Who will you call next?

Mr. Young: Mr. Williams does not seem to be here yet. We will call Mr. F. H. Davis.

F. H. DAVIS,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Where do you reside?

Mr. Davis: In Elizabeth, New Jersey.

Mr. Young: What is your business?

Mr. Davis: Broker.

Mr. Young: Of what firm are you a member?

Mr. Davis: Hawley & Davis.

Mr. Young: How long have you been such member?

Mr. Davis: Since March 31, 1902.

Mr. Young: Were you called into any conference in regard to the sale of any stock of the Louisville & Nashville Railroad?

Mr. Davis: Not until the contract was ready for execution.

Mr. Young: Was that the contract under which J. P. Morgan & Company took an option on the stock of the Louisville & Nashville Railroad?

Mr. Davis: Yes, sir.

Mr. Young: Did you attend a meeting then for the purpose of closing that option or contract?

Mr. Davis: I was present when it was closed, yes, sir.

Mr. Young: Who was present?

Mr. Davis: Mr. Stetson, Mr. Perkins, Mr. Harris, Mr. John W. Gates, Mr. Hawley, and a partner of Mr. Morgan from Philadelphia—I do not recall his name —and myself.

Mr. Young: Have you any recollection of the terms of the contract?

Mr. Davis: The terms had been agreed upon before.

Mr. Young: Had they been written out when you reached the meeting?

Mr. Davis: Yes, sir.

Mr. Young: Were any changes made after the meeting was begun?

Mr. Davis: Nothing but the phraseology.

Mr. Young: Who changed the phraseology?

Mr. Davis: Mr. Stetson and Gen. Hubbard.

Mr. Young: Was Gen. Hubbard your counsel?

Mr. Davis: Yes, sir.

Mr. Young: What changes were made in the draft of the contract as originally prepared?

.. Mr. Davis: They were so slight, I do not recall them—simply changes of phraseology.

Mr. Young: Had you any thing to do at all with the option of sale up to the time of the meeting when the papers were executed or to be executed?

Mr. Davis: Nothing whatever.

Mr. Young: Did you talk with any member of the firm of J. P. Morgan & Co. about it?

Mr. Davis: No, sir.

Mr. Young: Did you talk to Harris, Gates & Company about it?

Mr. Davis: No, sir.

Mr. Young: At this meeting, was anything said of the relations of the Louisville & Nashville to any other railroad property?

Mr. Davis: Nothing whatever.

Mr. Young: At the time of this conference in reference to the taking of this option, how much stock did your firm control?

Mr. Davis: 100,000 shares.

Mr. Young: Had you held it a long time or a short time at the time?

Mr. Davis: Quite a time—a good deal of it quite a long time.

Mr. Young: How long?

Mr. Davis: Some of it for years. Our firm has been in existence only since March, 1902.

Mr. Young: Was the stock secured for the purpose of controlling this property?

Mr. Davis: Yes, sir.

Mr. Young: At whose request did you secure it?

Mr. Davis: At the request of associates of ours.

Mr. Young: Were Harris, Gates & Company among those associates?

Mr. Davis: No, sir.

Mr. Young: At the time of the first flurry in Louisville & Nashville stock, when it began to advance in price, how much did your firm control?

Mr. Davis: I can not recall.

Mr. Young: How much—give some general idea.

Mr. Davis: I suppose we had most of it at that time.

Mr. Young: How long had your firm been engaged in securing this 100,000 shares?

Mr. Davis: We had considerable stock before the firm was in existence. We acquired some after the firm was organized.

Mr. Young: When did the firm of Hawley & Davis commence?

Mr. Davis: March 31, 1902.

Mr. Young: When was this option signed?

Mr. Davis: April 15, 1902.

Mr. Young: Can not you give us some idea how much stock Hawley & Davis controlled at the time of the formation of the firm of Hawley & Davis?

Mr. Davis: No, sir.

Mr. Young: 50,000 shares?

Mr. Davis: I do not know how much.

Mr. Young: Could you find out?

Mr. Davis: I suppose so.

Mr. Young: You could look at your books and see?

Mr. Davis: Yes, sir.

Mr. Young: Will you kindly look at your books and give a statement to the stenographer of the Commission of how much you had at that time?

Mr. Davis: I will ask if that is pertinent to the inquiry.

Mr. Young: That is for the Commission to decide.

The Chairman: What is the question?

Mr. Young: He asks whether the amount of stock Hawley & Davis held at the time the firm was organized, March 31, 1902, is pertinent?

The Chairman: Were you joint owners of the Louisville & Nashville stock at that time or did you own as individuals separately?

Mr. Davis: We owned as individuals.

The Chairman: Do you know how much Hawley & Davis had at that time?

Mr. Davis: I do not.

The Chairman: You could ascertain how much you owned?

Mr. Davis: Yes, sir.

The Chairman: Can not you tell approximately?

Mr. Davis: I have not any idea—not now.

Mr. Young: I ask the Commission to direct the witness to find out how much he owned and make a written statement to the stenographer, which we will accept.

The Chairman: Have you any objection to stating how much you owned at that time, Mr. Davis?

Mr. Cutcheon: If the Commission please, the witness feels that that is a subject of personal confidence, and as has been already stated by Mr. Hawley and Mr. Davis, they had some associates in the ownership of this stock, and I can hardly see, with all respect to counsel, how that can in any way affect the subject matter of this inquiry, and I take the liberty on the part of the witness of objecting.

The Chairman: If it has any relation, it appears to be very remote. There may be some significance.

Mr. Young: I am not asking the names of the individuals but the bulk amount.

The Chairman: Do you mean, Mr. Young, the number that Mr. Davis himself owned as an individual at that time?

Mr. Young: Either owned or held at that time for others. I do not ask the names.

The Chairman: Can you tell us, Mr. Davis, how much stock the firm of Hawley & Davis purchased after that firm was formed?

Mr. Davis: I can not tell from memory.

The Chairman: You can readily ascertain that?

Mr. Davis: It is on the books of the firm.

Mr. Young: I will ask that he make that statement to the stenographer later on.

The Chairman: Do you know of any reason why you should not furnish that information?

Mr. Davis: No, sir. It seems like a personal matter, not bearing on the inquiry.

The Chairman: It appears that at the time the stock was sold, Hawley & Davis had about 100,000 shares. It might have some possible significance to know how much of that stock was acquired after that firm was formed.

Mr. Davis: If it is any satisfaction, I can say that the greater part of it was purchased after the partnership was formed.

The Chairman: Is not that all you want, Mr. Young?

Mr. Young: Yes, sir; that is all. I asked that question and he declined to answer it.

The Chairman: Any further questions?

Mr. Young: I will ask one more question. What was the object on the part of Hawley & Davis in purchasing this large amount of stock after March 31, 1902?

Mr. Davis: To acquire control.

Mr. Young: That is all.

The Chairman: If there are no further questions, Mr. Davis will be excused.

The witness was excused.

JOHN F. HARRIS,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Where do you reside?

Mr. Harris: I reside in Chicago.

Mr. Young: Do you do business in New York?

Mr. Harris: Yes, sir.

Mr. Young: Under what name?

Mr. Harris: Harris, Gates & Co.

Mr. Young: How long since the firm of Harris, Gates & Co. was organized?

Mr. Harris: Well, March 1, 1902.

Mr. Young: Have you been a member of the firm continuously from that time, March 1, 1902?

Mr. Harris: Yes, sir.

Mr. Young: At the time of the firm of Harris, Gates & Co. was organized, do you know how much stock of the Louisville & Nashville Railroad it held?

Mr. Harris: At the time of the organization?

Mr. Young: Yes, sir.

Mr. Harris: None.

Mr. Young: How soon after, if you have it in mind, did you begin to acquire such stock? When I say "you" I mean the firm of Harris, Gates & Co.

Mr. Harris: Well, within thirty days, I should say.

Mr. Young: How much stock did you subsequently acquire?

Mr. Harris: I could not answer that question without looking at the books.

Mr. Young: Were you present at the conference when the option was given the firm of J. P. Morgan & Co. on certain shares of stock of the Louisville & Nashville Railroad Company?

Mr. Harris: When it was signed?

Mr. Young: Yes, sir.

Mr. Harris: Yes, sir.

Mr. Young: How many shares of stock did the firm of Harris, Gates & Co. have or control at that time?

Mr. Harris: I can not answer that question.

Mr. Young: Can not you give us about how many?

Mr. Harris: No, I could not.

Mr. Young: What was the date of the execution of that paper?

Mr. Harris: The fifteenth of April.

Mr. Young: When did you buy the first stock of the Louisville & Nashville Railroad, the firm of Harris, Gates & Co.?

Mr. Harris: Well, the firm of Harris, Gates & Co. never bought any Louisville & Nashville—you mean on account of others?

Mr. Young: Yes, on account of others.

Mr. Harris: Well, I have forgotten. I should say within fifteen to thirty days of the formation of the firm; between the fifteenth of March and the first of April.

Mr. Young: Did your firm have anything to do with the purchase of certain treasury stock of the Louisville & Nashville Railroad, amounting to 50,000 shares?

Mr. Harris: We do not know. We did not knowingly, but others might have sold us stock that was treasury stock.

Mr. Young: Did you know personally of the purchase of any treasury stock?

Mr. Harris: No, sir; I do not.

Mr. Young: Did you act solely for others in this matter or did Harris, Gates & Co. have an interest in it?

Mr. Harris: Solely for others.

Mr. Young: Did the firm of Harris, Gates & Co. never at any time have an interest in this option or the disposition of this stock?

Mr. Harris: Only for others.

Mr. Young: What was the purpose of purchasing this stock in such large quantities, Mr. Harris?

Mr. Harris: Well, the principal reason was the belief that it was selling below its true value.

Mr. Young: At what price did you begin to buy?

Mr. Harris: That is a question I am unable to answer.

The Chairman: You can tell approximately.

Mr. Harris: Well, the market at the time we began to buy was, I should say, about 105; perhaps a little higher.

Mr. Young: What is the highest price you ever paid for the stock before the execution of the option to J. P. Morgan & Co.

Mr. Harris: I could not answer that question. I do not remember. I do not know.

Mr. Young: You could readily tell by looking at your books

how much stock you bought, the days you bought it and the prices you paid, could you not?

Mr. Harris: Yes, sir.

Mr. Young: Have you any objection to doing that?

Mr. Harris: As I testified, we have acted for others.

Mr. Young: I do not ask who you acted for. I only want to know when you acted and how you acted.

Mr. Cutcheon: How is that material?

Mr. Young: It is material how it was purchased. Do you know what price the Atlantic Coast Line paid for it?

Mr. Harris: No, I do not.

Mr. Young: Did you ever have any conferences yourself personally with any members of the firm of J. P. Morgan & Co.

Mr. Harris: I was present at some conferences.

Mr. Young: Who was present when you were there?

Mr. Harris: Mr. Perkins, Mr. Hawley and Mr. Gates.

Mr. Young: Did you ever confer with any other member of the firm except Mr. Perkins?

Mr. Harris: Well, Mr. Stetson. I think I talked with Mr. Stotesbury.

Mr. Young: Is he a member of the firm of J. P. Morgan & Co.?

Mr. Harris: Yes, sir; so Mr. Steele said or Mr. Stetson.

Mr. Young: At any of these conferences was there ever any discussion as to the relations of the Louisville & Nashville Railroad to other properties in the South?

Mr. Harris: No, there was not.

Mr. Young: Was the Southern Railway never mentioned?

Mr. Harris: Not to the best of my recollection.

Mr. Young: Was the Atlantic Coast Line never mentioned?

Mr. Harris: I have no recollection of any member of the firm of J. P. Morgan & Company mentioning any other railroad.

Mr. Young: Did you ever mention any other railroad?

Mr. Harris: No, sir.

Mr. Young: Did anybody else in the conference mention any other railroad?

Mr. Harris: In connection with the purchase of J. P. Morgan & Co.?

Mr. Young: Yes, sir.

Mr. Harris: Not to the best of my recollection.

Mr. Young: In the negotiations that led up to that purchase or option, did you or anybody else discuss the relations of the

Louisville & Nashville Railroad to other railroad properties in the South?

Mr. Harris: Well, we may in a general sort of way.

Mr. Young: Well, how general?

Mr. Harris: That is a pretty broad question. We may have mentioned in a conference that lasted an hour the name of a Southern railroad.

Mr. Young: That is not the question—whether you mentioned the name. I said, mentioned in reference to other railway properties.

Mr. Harris: I have no recollection of any mention of any Southern railway in connection with the negotiations.

Mr. Young: You say you never heard of any mention at all of any other property in the South in connection with this disposition of the stock of the Louisville & Nashville Railroad and its effect on other properties?

Mr. Harris: By any member of the firm of J. P. Morgan & Co.?

Mr. Young: I said anybody that was as these conferences. Did they discuss this matter at all?

Mr. Harris: No, sir; I have no recollection of any mention of it.

Mr. Young: Have you discussed this matter since the former hearing or prior to the former hearing with any member of the firm of J. P. Morgan & Co.

Mr. Harris: Since what hearing?

Mr. Young: Since the first hearing of this matter before the Commission in New York on the 15th of January.

Mr. Harris: No, sir.

Mr. Young: Have you ever discussed it with the firm of J. P. Morgan & Co. at any time, the subject of the bearing of the Louisville & Nashville on other property in the South?

Mr. Harris: No, sir.

Mr. Young: Have you discussed the sale or transfer of this property with anybody since the meeting of this Commission on the 15th of January, 1903?

Mr. Harris: Yes, sir.

Mr. Young: Who— I mean with any parties interested? I do not mean on the street. I mean any parties called in question by this examination.

Mr. Harris: That is, by officials of the Atlantic Coast Line or members of the firm of J. P. Morgan & Company?

Mr. Young: Yes, sir; on the Seaboard Air Line or anybody else that would be interested in it.

Mr. Harris: Well, not with J. P. Morgan & Company, the Seaboard Air Line or the Atlantic Coast Line.

Mr. Young: That is all, so far as we are concerned.

The Chairman: Mr. Harris, the Commission desire you to furnish a statement showing the dates you purchased this stock, what you paid for it and how much you had at the time this contract was executed.

Mr. Harris: We were in the commission business and we had a lot of stock of those who did not sell it. Is it necessary for us to show just the amount of stock we had regardless of the final disposition of it?

The Chairman: We do not ask you to disclose the names of the persons for whom you acted.

Mr. Cutcheon: The point is that Harris, Gates & Company held as commission brokers a large amount of stock other than that covered by this contract, which had nothing to do with the acquisition of control. Mr. Harris wants to know if you want that included.

The Chairman: We have reference to the stock your firm controlled or could control—all that had to do with this transfer.

Mr. Harris: That was 206,000 shares. I thought you referred to the total amount we had.

Mr. Young: No, the amount involved in this option.

Mr. Harris: 206,000 shares.

The Chairman: Can not you tell us approximately about when that was purchased and the prices. We do not care for the precise dates or exact prices, but a general statement showing about how rapidly that was acquired and when.

Mr. Cutcheon: Would it do to give a statement of when the purchase began and when it ended—that they began purchasing at such a price and purchased up to such a price.

Commissioner Yeomans: It was testified at the former hearing that the purchases ran from 100 to 110; that there were 306,000 shares of it and that Harris, Gates & Company held 104,000 shares and Hawley & Davis 202,000.

Mr. Cutcheon: If that statement will answer the purpose of the Commission, we will be glad to prepare and furnish it.

Mr. Harris: As to the approximate time—the firm was organ-

ized the 1st of March—I think we began buying about the 15th of March.

The Chairman: And continued to buy until about the time this contract was executed?

Mr. Harris: Yes, sir.

The Chairman: And during that time acquired the 206,000 shares in question?

Mr. Harris: Yes, sir.

The Chairman: At prices ranging between what figures?

Mr. Harris: Well, the stock ranged during that time, I should say, from 105 to 130—perhaps 132 or 133.

The Chairman: Are you able to state approximately what it averaged?

Mr. Harris: Not from memory.

The Chairman: Nor about how much was bought at different figures approximately?

Mr. Harris: No, I could not venture a statement that I would think at all accurate.

The Chairman: Can not you give us about the average price?

Mr. Harris: No, I can not. Of course, our books will show.

The Chairman: Is there any objection to your furnishing that evidence?

Mr. Harris: Our only objection is this: As I stated, we acted for others and to divulge the prices that we at their orders paid for certain stock is something I am a little loath to do. That is the only reason for hesitation.

The Chairman: We do not care for exact dates and do not ask the disclosure of any names.

Mr. Harris: We would prefer not to do it.

The Chairman: My recollection is that some witness at the former hearing testified as to what he understood the stock averaged to cost.

Mr. Harris: Can I give the commission a later answer upon that question?

The Chairman: We would prefer to have you refer to your books and see if the answer is right.

Mr. Harris: Very well, we will do so. I fancy there is no substantial objection.

Mr. Cutcheon: The witness wants to consider the matter, if the commission please.

The Chairman: Very well, we will leave the matter in that shape, Mr. Harris.

Mr. Harris: Very well.

Mr. Young: We do not care to ask Mr. Harris anything further.

Commissioner Yeomans: Mr. Harris, you remember what you got for the stock, do you not?

Mr. Harris: Yes, sir.

Commissioner Yeomans: What was the price it was sold to J. P. Morgan & Company for?

Mr. Harris: Of the 306,000 shares, 100,000 at 130 and the remainder at 150.

Mr. Stetson: Were the prices paid any different from those stated in the written contract?

Mr. Harris: No, sir.

Mr. Stetson: The contract was carried out exactly?

Mr. Harris: Yes, sir.

Mr. Stetson: It has been testified to forty times, I suppose, Mr. Commissioner.

The Chairman: If there are no further questions, Mr. Harris will be excused.

The witness was excused.

J. SKELTON WILLIAMS,

a witness on behalf of the complainant, having been duly sworn testified as follows:

Mr. Young: Where do you reside?

Mr. Williams: In Richmond, Virginia.

Mr. Young: Are you president of any railway?

Mr. Williams: Yes, sir.

Mr. Young: What railway?

Mr. Williams: The Seaboard Air Line Railway and several others.

Mr. Young: How long have you been president of the Seaboard Air Line?

Mr. Williams: For something over four years.

Mr. Young: How many miles of railroad does the Seaboard Air Line operate or control?

Mr. Williams: Something over 2,600.

Mr. Young: What are its gross earnings?

Mr. Williams: About twelve million a year.

Mr. Young: And the net?

Mr. Williams: Between three and three and a half million a year.

Mr. Young: What are the principal points on the Seaboard Air Line south of Richmond?

Mr. Williams: I should say Norfolk, Portsmouth, Raleigh, Wilmington, Charlotte, Columbia, S. C., Savannah, Ga., Atlanta, Ga., Montgomery, Ala., and the principal cities in Florida.

Mr. Young: To what extent is the Seaboard Air Line a competitor in freight and passenger traffic with the Atlantic Coast Line?

Mr. Williams: It is a competitor at nearly all important points.

Mr. Young: Has your line any connection with Birmingham, or is it proposed?

Mr. Williams: We are building a line to Birmingham.

Mr. Young: What about Montgomery?

Mr. Williams: We have a line already to Montgomery.

Mr. Young: How long has that been in operation?

Mr. Williams: I think it has been in operation about ten years.

Mr. Young: Did you ever hear anything about the acquisition of the stock of the Louisville & Nashville Railroad Company by J. P. Morgan & Company before the execution of the contract or option made between Morgan & Company and Harris, Gates & Company?

Mr. Williams: Yes, sir; I heard the common story in regard to it. I got information from different directions bearing on the subject.

Mr. Young: Did you yourself enter into any negotiations for the acquisition of the Louisville & Nashville Railroad Company stock held by J. P. Morgan & Company or others?

Mr. Williams: You mean after it had been sold?

Mr. Young. Before.

Mr. Williams: After it had been sold to Morgan & Company?

Mr. Young: Yes, after Morgan & Company took the option.

Mr. Williams: I had one interview with them in reference to the matter.

Mr. Young: When you say "with them" who do you mean?

Mr. Williams: Mr. Perkins of the firm of J. P. Morgan & Company.

Mr. Young: Did you see any other member of the firm?

Mr. Williams: Not on the subject.

Mr. Young: Did you seek the interview with them or did they seek it with you?

Mr. Williams: Well, that is a little hard to say. A gentleman, a friend of mine, told me that he thought it possible some arrangement might be made with Morgan & Company by which we could secure some interest in the Louisville & Nashville proposition and told me he had arranged to see Morgan & Company in regard to it. He did see them and subsequently communicated with me and informed me that he thought it possible something might be done in connection with the matter and that he would like me to meet Mr. Perkins if I would be willing to do so to discuss the subject. I told him if the matter was open and had not been disposed of I would be willing to meet Mr. Perkins to talk it over, as we would be glad to acquire the road if we could do so on a reasonable basis. Our previous efforts to acquire it before Mr. Morgan's purchase were fruitless. An arrangement was made by which I met Mr. Perkins to discuss the subject.

Mr. Young: What was your object as president of the Seaboard Air Line in acquiring control of the Louisville & Nashville Railroad Company?

Mr. Williams: To secure control of an important connection by which we could develop a large interchange of business between the two systems to the mutual advantage of both.

Mr. Young: The Louisville & Nashville at certain points was a competitor of the Seaboard Air Line, was it not?

Mr. Williams: No, sir; not to any appreciable extent. The situation was one by which the two systems would naturally work together for the mutual advantage of both and to the benefit of the territory served.

Mr. Young: You both went into Montgomery?

Mr. Williams: We gave them northbound and they gave us southbound business. We were not strictly a competitor of the Louisville & Nashville at that point.

Mr. Young: There were points where you did compete, were there not?

Mr. Williams: I should not call the Louisville & Nashville a competitive system of the Seaboard Air Line.

Mr. Young: Was your Birmingham line or branch under construction at that time, in 1902?

Mr. Williams: It was not.

Mr. Young: When did you begin it?

Mr. Williams: We determined upon the construction of the Birmingham line after we failed to get the Louisville & Nashville.

Mr. Young: Had not you made surveys prior to that time?

Mr. Williams: Yes, sir; but nothing had been determined.

Mr. Young: Had you acquired any rights of way?

Mr. Williams: I think not.

Mr. Young: Or made any contracts at all for construction?

Mr. Williams: I think not.

Mr. Young: Did you come to New York, or where did you meet Mr. Perkins in regard to the acquisition or control of the Louisville & Nashville Railroad stock?

Mr. Williams: I was in New York at the time and met Mr. Perkins by appointment at the office of J. P. Morgan & Company.

Mr. Young: Is that the only interview you had with him on that subject?

Mr. Williams: That was the only one until the whole matter was closed up. I met him subsequently at a dinner and we casually referred to the subject.

Mr. Young: That was a mere incident?

Mr. Williams: Yes, sir.

Mr. Young: Now, in discussing this matter with Mr. Perkins, was anything said about the relation of the Louisville & Nashville to other railway properties in the south?

Mr. Williams: In what way?

Mr. Young: In this way: What relation did the Louisville & Nashville Railroad bear to other railroads; what effect its acquisition by certain parties would have, or whether it would be better for one person or another person to control the Louisville & Nashville Railroad?

Mr. Williams: Yes, sir.

Mr. Young: Well, what was said along those lines?

Mr. Williams: Mr. Perkins told me that it was not likely that J. P. Morgan & Company would part with the control of the Louisville & Nashville Railroad to any line that they could not control themselves.

Mr. Young: Well, that let you out, did it? When I say "you" I mean the property you represent.

Mr. Williams: My object in seeing him was to purchase, if we could, the Louisville & Nashville Railroad. I asked him early

in our conversation whether it was likely that he would sell the Louisville & Nashville Railroad to the Seaboard Air Line Railway at any price which could be regarded as reasonable, and he informed me that it was not, speaking candidly. He then remarked that he did not think it likely they would sell the Louisville & Nashville Railroad to any system that was not already practically controlled by them, and he also asked me whether I would not name a price at which we would sell the Seaboard Air Line or buy the Louisville & Nashville. I informed him that the Seaboard Air Line was not for sale at any price to anybody, but that we would be willing to buy the Louisville & Nashville. He told me that he did not think they would be willing to sell the Louisville & Nashville to anybody they could not control. I said, do you mean by that, then, that you would no sooner sell the Louisville & Nashville to the Atlantic Coast Line than you would to the Seaboard Air Line, if you could not control it. He said, I do mean it.

Mr. Young: Now, how long after the option given Morgan & Company was this conversation with Mr. Perkins?

Mr. Williams: The conversation was on July 10th.

Mr. Young: Did you ever re-open the subject in any way with him by wire or letter?

Mr. Williams: On that subject?

Mr. Young: Yes, sir.

Mr. Williams: I did not.

Mr. Young: The Seaboard Air Line was not in any way controlled by the firm of J. P. Morgan & Company at that time?

Mr. Williams: It never was and never has been.

Mr. Young: And so far as you believed then, never will be?

Mr. Williams: I believe it never will be.

Mr. Young: Did you make any proposition of any kind for the purchase of the stock of the Louisville & Nashville Railroad, or did this position taken by Mr. Perkins in regard to the control of J. P. Morgan & Company decide you to withdraw altogether from an effort to acquire the property?

Mr. Williams: Mr. Perkins suggested in the interview that the Louisville & Nashville might be maintained as an independent property or it might be turned over to some line by the Morgan interests, but he gave me to understand that nothing definite had been decided on at that time and no plans crystallized.

Mr. Young: Did you make an offer of 135?

Mr. Williams: To J. P. Morgan & Company?

Mr. Young: Yes, sir.

Mr. Williams: No, sir; I did not. I never made them any offer.

Mr. Young: Did you make any offer to Harris, Gates & Company?

Mr. Williams: We had negotiations on with them before the sale to Morgan & Company?

Mr. Young: Did you make any offer for the property up to that time?

Mr. Williams: Prior to the sale to Morgan & Company?

Mr. Young: Yes, sir.

Mr. Williams: We had negotiations on—offers in which our minds could meet, but they never met.

Mr. Young: Did you make any offer to lease the property?

Mr. Williams: We discussed the matter of a lease.

Mr. Young: Did you make any definite offer?

Mr. Williams: We made tentative offers, trying to arrive at a basis of agreement.

Mr. Young: Do you mean offers in such a shape that if accepted you would be bound?

Mr. Williams: I mean our negotiations were in good faith on both sides, and we endeavored to let them understand about what we would be willing to do, without submitting any proposition in writing or any clean-cut offer except, as I say, in a general way. We let them understand about what we could do and found we could not come together within the short time these negotiations were carried on.

Mr. Young: Did you know at that time the relations of J. P. Morgan & Company to the Southern Railway?

Mr. Williams: I did.

Mr. Young: Well, what is that relation so far as you know? Is it one of control or direction?

Mr. Williams: Mr. Morgan and his two friends on the voting trust, as I understand, elect the board of directors of the Southern Railway.

Mr. Young: We do not desire to ask Mr. Williams anything further.

Mr. Stetson: Who is the friend to whom you refer as having opened negotiations with the firm of J. P. Morgan & Company?

Mr. Williams: William McAdoo, of New Jersey.

Mr. Stetson: The former assistant secretary of the navy?

Mr. Williams: No, sir; his law partner, William G. McAdoo.

Mr. Stetson: Do you remember whether or not at the time of this interview of July 10th you knew what the Atlantic Coast Line Company or the Atlantic Coast Line Railroad Company were negotiating with Morgan & Company for the purchase of this property?

Mr. Williams: Mr. Perkins informed me they were or that they had interviews with Mr. Walters on the subject.

Mr. Stetson: Did he tell you that he told Mr. Walters, pending those negotiations, that he would not take the matter up with anybody else?

Mr. Williams: No, sir; on the contrary he said he was free to negotiate with anybody he chose.

Mr. Stetson: Have you now given the conversation between Mr. Perkins and yourself with verbal accuracy?

Mr. Williams: I have endeavored to do so.

Mr. Stetson: I would like to have you state to me accurately—with verbal accuracy as nearly as you can—the whole of that conversation. Where was it?

Mr. Williams: I have stated where it was—in the office of J. P. Morgan & Company.

Mr. Stetson: 23 Wall Street, New York?

Mr. Williams: I do not know the number. I do not know whether they have more than one office or not.

Mr. Stetson: That is why I asked the question whether it was at the corner of Broad and Wall Street, New York.

Mr. Williams: It was.

Mr. Stetson: What time of day?

Mr. Williams: 4:30 in the afternoon.

Mr. Stetson: How long did it last?

Mr. Williams: Probably an hour.

Mr. Stetson: Did it begin or end at 4:30?

Mr. Williams: It began at 4:30.

Mr. Stetson: Who was present?

Mr. Williams: Mr. Perkins and McAdoo.

Mr. Stetson: William G. McAdoo?

Mr. Williams: Yes, sir.

Mr. Stetson: How did the conversation open?

Mr. Williams: I made a note of the interview at the time.

Mr. Stetson: Have you it?

Mr. Williams: I have.

Mr. Stetson: Will you produce it?

Mr. Williams: Yes, sir. (Producing paper.)

Mr. Stetson: That is exactly what I would be glad to have. Pardon me a moment. Have you any recollection of the interview that differs from the memorandum?

Mr. Williams: I have not.

Mr. Stetson: You believe that this is an accurate and exhaustive memorandum of the conversation?

Mr. Williams: I endeavored to make it accurate and full at the time, not having in mind that I would need it in the future.

Mr. Stetson: Have you any objection to putting that memorandum in?

Mr. Williams. I have not.

Mr. Stetson: I would like to have you read it and put it in.

The Chairman: When was the memorandum made, Mr. Williams?

Mr. Williams: I think it was made the same evening or the following morning.

The Chairman: Dictated by you to a stenographer?

Mr. Williams: Yes, sir.

The Chairman: And written out by him?

Mr. Williams: Yes, sir.

Commissioner Fifer: Was it shown to the other party?

Mr. Williams: It was never submitted to Mr. Perkins, no. It was simply for my own use.

Commissioner Fifer: I thought he may have seen it.

Mr. Williams: No, I never showed it to him.

Mr. Young: You do not have to read it, Mr. Williams, unless you want to.

Mr. Williams: It is immaterial to me whether it is read or not.

Mr. Stetson: It is not immaterial to me. I have asked for it.

Mr. Williams: I desire to say that I have not known until this moment at whose instance I was called. I have had no interview with any of the attorneys on either side.

The Chairman: We understand Mr. Williams to say that he made a memorandum of this interview with Mr. Perkins very soon after it occurred. He produces the memorandum and says he is willing to read it.

Mr. Williams read the memorandum, as follows:

"New York, July 10, 1902, 4:30 p. m. Called with Mr. W.

G. McAdoo on Messrs. J. P. Morgan & Co., Mr. Perkins having expressed to Mr. McAdoo a willingness to consider the sale or lease of the L. & N. to the Seaboard.

"In the course of the conference Mr. Perkins requested us to name a price at which we could either purchase the L. & N. from him or sell to him the Seaboard Air Line Railway. I advised him that the Seaboard Air Line Railway was not for sale at any price.

"In reply to my question, he admitted that J. P. M. & Co., would not be likely to agree to sell the L. & N. on any terms which we might consider reasonable. He said it was possible they would retain the L. & N. as an independent proposition, but probable that they would link it up with some other system, which other system they themselves would control. He said he did not think they would be willing to dispose of the L. & N. to any system which they could not control. I asked him if he would be willing to dispose of the L. & N. to the Atlantic Coast Line on any terms which he would not be willing to give to the Seaboard. He replied, no. From this it would therefore seem that they would not sell the L. & N. to the Coast Line unless they could at the same time control the A. C. L. I asked Mr. Perkins whether they would be willing to have the L. & N. controlled jointly by a voting trust composed of J. P. M. & Co., the Atlantic Coast Line and the Seaboard, provided the two latter roads should be combined with the L. & N., and he seemed to think some such plan might be feasible. He said that Mr. Walters of the Coast Line had been talking to him in regard to the L. & N., but that nothing definite had been agreed to.

"In opening the conversation Mr. Perkins asked whether he had any connection on hand which might interfere or conflict with a discussion of this matter, such as the Illinois Central, etc. I replied that we had no entangling alliances of any sort which would prevent our taking up this matter with him. He on his part, said he had none which would prevent his discussing the matter with us. We parted, with the understanding that if either party should develop any plan which might seem feasible, that we should discuss the subject further."

Mr. Williams: I will furnish a copy of it.

Mr. Stetson: Are the Atlantic Coast Line and the Seaboard Air Line competing lines?

Mr. Williams: They are.

Mr. Stetson: Do I rightly understand that you proposed an

arrangement by which those two lines should enter into the holding of the Louisville & Nashville?

Mr. Williams: I proposed that the Louisville & Nashville should be operated in connection with the several roads with which it was doing business, a plan somewhat similar to the plan under which the line between Richmond and Washington is controlled by several connecting systems.

Mr. Stetson: You mentioned some specially.

Mr. Williams: The effect of my suggestion—

Mr. Stetson: I am not asking the effect.

Mr. Williams: The suggestion was that the Louisville & Nashville should be an open highway to the Atlantic Coast Line, The Seaboard Air Line and the Southern.

Mr. Stetson: I am asking you as to the fact. Did you refer to any other road than the Atlantic Coast Line and The Seaboard Air Line?

Mr. Williams: I did. I thought it should be open to the Southern Railway at the same time.

Mr. Stetson: You have said that the Louisville & Nashville was a connecting line of the Seaboard Air Line?

Mr. Williams: Yes, sir.

Mr. Stetson: Was it also a connecting line of the Atlantic Coast Line?

Mr. Williams: It was scarcely any more than competing. I consider that the Atlantic Coast Line was hardly more of a competing line with the Louisville & Nashville than was the Seaboard.

Mr. Stetson: Did you think either of them—

Mr. Williams: I thought neither the Seaboard Air Line nor the Atlantic Coast Line was seriously competitive with the Louisville & Nashville.

Mr. Stetson: As a railroad man it would not occur to you that either of those was a competitor of the Louisville & Nashville?

Mr. Williams: No, sir.

Mr. Stetson: You would consider them connecting rather than competing lines?

Mr. Williams: Yes, sir.

Mr. Stetson: Therefore you would consider it proper that those two lines should unite in the acquisition of a connecting line to be used in common between them?

Mr. Williams: Yes, sir.

Mr. Stetson: Just as you have said the Chesapeake & Ohio,

the Southern, the Pennsylvania, the B. &. O. and the Atlantic Coast Line have united in acquiring the line from Richmond to Washington?

Mr. Williams: Yes, sir.

Mr. Stetson: Do you know anything as to the holdings, or did you at that time know anything as to the holdings of the stock of the Atlantic Coast Line?

Mr. Williams: As to who controlled the Atlantic Coast Line?

Mr. Stetson: If you wish to put it that way.

Mr. Williams: Only very general hearsay.

Mr. Stetson: What was your understanding about it?

Mr. Williams: I understood that the Atlantic Coast Line was largely controlled by Mr. Walters and his immediate associates.

Mr. Stetsno: Up to that time, had you ever heard of J. P. Morgan & Company having any control of that line?

Mr. Williams: I had, but placed no confidence in the rumors. It was a matter of common report that Messrs. Morgan & Company do control the Atlantic Coast Line and have controlled it.

Mr. Stetson: Do you believe it?

Mr. Williams: I have not believed these reports.

Mr. Stetson: Do you now believe it, that J. P. Morgan & Company control the Atlantic Coast Line?

Mr. Williams: I have no information on the subject. I do not know who controls it.

Mr. Stetson: I asked if you believed it.

Mr. Williams: The hearsay is that Mr. Walters controls it, and that is my information.

Mr. Stetson: Mr. Walters has sworn to it. I have nothing more to ask.

Commissioner Yeomans: Do you know at what date Morgan & Company purchased that road from Gates & Company?

Mr. Williams: I think it was in April a year ago.

Commissioner Yeomans: They had owned it, then, from April up to July 10?

Mr. Williams: Yes, sir; or rather they had an option on it. An option was given on it in April. I have never seen the option. It was not a hard and fast sale. They secured the option in April and disposed of it in October. They controlled it in July through the holding of the option.

Mr. Baxter: At what points do the Seaboard Air Line and the Louisville & Nashville Railroad come in contact actually?

Mr. Williams: You mean the Seaboard Air Line and Atlantic Coast Line?

Mr. Baxter: No, the Louisville & Nashville.

Mr. Williams: You mean the Louisville & Nashville or its auxiliary controlled companies? Do you include the Nashville, Chattanooga & St. Louis?

Mr. Baxter: No, sir.

Mr. Williams: At Montgomery, Alabama, and at the Chattahoochee river in Florida.

Mr. Baxter: Near River Junction?

Mr. Williams: Yes, sir.

Mr. Baxter: These are the only two points at which the Atlantic Coast Line comes into physical contact with the rails of the Louisville & Nashville?

Mr. Williams: I am not as well informed as to the connections of the Atlantic Coast Line and the Louisville & Nashville as I am with the Seaboard Air Line and the Louisville & Nashville.

Mr. Baxter: You know that the Seaboard Air Line acquired the Plant System and that the Plant System had a line from Savannah to Montgomery?

Mr. Williams: The Atlantic Coast Line acquired that.

Mr. Baxter: Then, it had a line coming in paralleling the Seaboard Air Line?

Mr. Williams: I think there was a connection at Chattahoochee river between the Atlantic Coast Line and the Louisville & Nashville.

Mr. Baxter: So the Seaboard Air Line and the Atlantic Coast Line comes into physical contact with the Louisville & Nashville Railroad at the same two places?

Mr. Williams: Yes, sir.

Mr. Baxter: Now, the Nashville, Chattanooga & St. Louis, of which the Louisville & Nashville owns a majority of the stock, that also touches the Seaboard at Atlanta?

Mr. Williams: Yes, sir.

Mr. Baxter: And the Atlantic Coast Line does not reach Atlanta?

Mr. Williams: The Atlantic Coast Line reaches Atlanta over the Georgia Railroad, which is jointly leased by the Atlantic Coast Line and the Louisville & Nashville Railroad.

Mr. Baxter: So, counting that Georgia Line, in which those two lines are jointly interested, the Seaboard Air Line and the

Atlantic Coast Line both touch the Nashville, Chattanooga & St. Louis Railroad at Atlanta?

Mr. Williams: Yes, sir.

Mr. Baxter: And the Atlantic Coast Line and the Seaboard Air Line both connect with the Louisville & Nashville proper at Montgomery and Chattahoochee or River Junction?

Mr. Williams: Yes, sir.

Mr. Baxter: So the points of contact with the Louisville & Nashville or the Nashville, Chattanooga & St. Louis are the same?

Mr. Williams: Yes, sir.

Mr. Baxter: And, as you stated, you did not regard one as more competitive with the Louisville & Nashville than the other?

Mr. Williams: Scarcely more so—very little difference. In other words, I thought that if it was legal for the Seaboard Air Line to lease the Louisville & Nashville system, it was also legal for the Atlantic Coast Line to lease the Louisville & Nashville system, provided the Atlantic Coast Line was an independent company.

Mr. Baxter: That is all.

Mr. Young: One question more. Mr. Stetson, in stating your suggestion, you did not state it, as I thought you did. I understand you to say that the suggestion was that the Louisville & Nashville Railroad should be a common line, common to the Seaboard Air Line, the Atlantic Coast Line and the Southern Railway.

Mr. Williams: I elaborated that suggestion in my subsequent correspondence in connection with this subject.

Mr. Young: That is all.

The witness was excused.

C. G. GATES,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Where do you reside?

Mr. Gates: In New York City.

Mr. Young: What is your business:

Mr. Gates: Broker.

Mr. Young: How long have you been in New York City?

Mr. Gates: A year ago the 10th of March—March, 1902.

Mr. Young: You came here from Chicago?

Mr. Gates: Yes, sir.

Mr. Young: Are you a son of Mr. John W. Gates?

Mr. Gates: I am.

Mr. Young: Were you a member of the firm of Harris, Gates & Company?

Mr. Gates: Yes, sir.

Mr. Young: Were you such member when the firm was organized in March, 1902?

Mr. Gates: March 1, 1902.

Mr. Young: What, if anything, did you have to do with the acquisition or control of the stock of the Louisville & Nashville Railroad Company by Harris, Gates & Company which was subsequently sold to J. P. Morgan & Company?

Mr. Gates: As a partner in the firm of Harris, Gates & Company, I gave orders for the purchase of the stock on the New York stock exchange and personally executed some orders myself.

Mr. Young: Are you yourself a member of the New York Stock Exchange?

Mr. Gates: Yes, sir.

Mr. Young: Were you a party to any of the conferences that were held for the disposition of this stock of the Louisville & Nashville to J. P. Morgan & Company?

Mr. Gates: Well, I was present at one meeting in J. P. Morgan & Company's office only for a few moments. I would not consider that I was a member of any conference pertaining to the sale of the property.

Mr. Young: Who was there at the conference you speak of?

Mr. Gates: The conference I was present at, there was Mr. Geo. W. Perkins, Mr. Hawley, Mr. John W. Gates, and my partner, Mr. Harris.

Mr. Young: Did you hear any part of the discussion at all?

Mr. Gates: No, sir; I was only in the room a few moments to deliver a message. The conversation lulled at that time and I went out.

Mr. Young: Did you know at that time that Harris, Gates & Company were acquiring this Louisville & Nashville stock and the purpose for which it was being acquired?

Mr. Gates: Yes, sir.

Mr. Young: What was the purpose?

Mr. Gates: It was acquired for control.

Mr. Young: Control for whom?

Mr. Gates: Control for parties that we represented.

Mr. Young: I do not ask the names of those parties. How many were there?

Mr. Gates: There were some fifteen or sixteen.

Mr. Young: Do you know the object of securing control of the Louisville & Nashville Railroad?

Mr. Gates: Yes, sir. I think so.

Mr. Young: What was it?

Mr. Gates: It was to operate the property, if it was not sold.

Mr. Young: You had two ideas, to operate it if you had to and sell it if you could?

Mr. Gates: Yes, sir.

Mr. Young: Speculative?

Mr. Gates: No, sir; I would not put it that way. The property was bought because the people interested in buying it believed it was selling below its real value, that the property would show better results if properly operated by other people, and it was bought with the idea to control the property and of course to sell it if the price was offered.

Mr. Young: If you could do well with it?

Mr. Gates: Yes, sir; and if not, we would operate it.

Mr. Young: Were you at all interested in this matter personally?

Mr. Gates: No, sir.

Mr. Young: Did your firm have any interests in it?

Mr. Gates: No, sir.

Mr. Young: Except purely to represent others—an interest only to the extent of your commission?

Mr. Gates: That was the only interest, yes, sir.

Mr. Young: Do you know anything about the acquisition of 50,000 shares of treasury stock of the Louisville & Nashville Company by you or the people you represented?

Mr. Gates: Nothing directly, no, sir.

Mr. Young: Do you know anything indirectly?

Mr. Gates: Well, it came about while we were buying the stock. It developed that a certain firm, E. C. Potter & Company, were selling their stock, and it afterwards developed that they had undoubtedly sold some treasury stock. They were supposed to represent August Belmont & Company.

Mr. Young: Is that what you call selling short?

Mr. Gates: Not necessarily.

Mr. Young: They were selling stock that had not been issued?

Mr. Gates: It was evident afterwards that that was the case.

Mr. Young: Did you not know it then?

Mr. Gates: No, sir; not absolutely.

Mr. Young: Did you have an inkling of it?

Mr. Gates: Well, yes, sir. It was in a general way the talk of the street.

Mr. Young: You thought that was a good way to catch somebody—I do not mean offensively—when you demanded delivery, they could not deliver?

Mr. Gates: That was not the case until after we purchased a great amount of the stock.

Mr. Young: How much had you purchased when you made that discovery?

Mr. Gates: Well, I should say in round numbers some 200,000 shares.

Mr. Young: You mean that the firm of Harris, Gates & Company had purchased 200,000 shares when they made the discovery that 50,000 shares of treasury stock was being sold short, if I get the term right. If I do not, correct me.

Mr. Gates: Yes, sir.

Mr. Young: Do you know who E. C. Potter represented in the sale of this stock?

Mr. Gates: Only in the general talk of the street.

Mr. Young: Well, Mr. Stetson has had some rumors. I will ask you what the rumor was on that.

Mr. Gates: It was generally supposed that E. C. Potter & Company were August Belmont & Company's brokers.

Mr. Young: What relation did August Belmont have to the Louisville & Nashville Railroad?

Mr. Gates: I believe he was chairman.

Mr. Young: Of the Board of Directors?

Mr. Gates: Yes, sir.

Mr. Young: He controlled all its affairs in the city of New York and represented it here?

Mr. Gates: Supposedly, yes, sir.

Mr. Young: Did you know at the time how much treasury stock was being disposed of?

Mr. Gates: No, sir.

Mr. Young: Do you know whether the firm of Harris, Gates & Company subsequently acquired some of that treasury stock?

Mr. Gates: That is something I can not swear to, because in buying stock in the stock exchange you buy from various persons and can not say who their principals are.

Mr. Young: What proportion of the stock was actually delivered to Harris, Gates & Company out of the 206,000 shares they sold to Morgan & Company or upon which they gave them an option?

Mr. Gates: 206,000 shares were delivered to Harris, Gates & Company.

Mr. Young: Did you have the actual certificates for 206,000 shares?

Mr. Gates: Yes, sir.

Mr. Young: That was on the 15th of April?

Mr. Gates: Yes, sir.

Mr. Young: When was this treasury stock available for transfer and sale?

Mr. Gates: I can not state the exact day; sometime in April, if I mistake not.

Mr. Young: Was it before or after the 15th?

Mr. Gates: After the 15th, I think.

Mr. Young: In other words, the treasury stock sold by E. C. Potter & Company could not be delivered so as to make a good sale until after April 15th.

Mr. Gates: That is my recollection.

Mr. Young: And after April 15th, Harris, Gates & Company had given an option to J. P. Morgan & Company for 206,000 shares of their holdings?

Mr. Gates: Yes, sir.

Mr. Young: Now, so far as you know, was not the purpose of buying this stock—was not the object of buying this stock to create a corner here?

Mr. Gates: No, sir; on the contrary, on the 11th day of April Harris, Gates & Company gave a notice in writing to the New York Stock Exchange of their own free will, and voluntarily did it, that so far as the firm of Harris, Gates & Company was concerned, there was no attempt being made to corner Louisville & Nashville stock and that we would gladly loan the stock to short sellers until their contracts were fulfilled.

Mr. Young; Had there been any flurry or commotion in the stock on the 11th?

Mr. Gates: On the 10th, yes, sir.

Mr. Young: On the 11th you became benignant and agreed to let people have it that were hard pressed for it?

Mr. Gates: Yes, sir.

Mr. Young: Now, the sale was made, as I recollect, on the 15th?

Mr. Gates: Yes, sir.

Mr. Young: Up to the 11th, had your firm had any conference with J. P. Morgan & Company or any member of it in reference to the disposition of this stock?

Mr. Gates: On or before the 11th?

Mr. Young: Yes, sir.

Mr. Gates: Not to my knowledge.

Mr. Young: If it had, you knew nothing about it?

Mr. Gates: No, sir.

Mr. Young: That is all.

Mr. Cutcheon: Was the suggestion which you made to the New York Exchange and the notice you gave to it made at the request of anybody outside of the firm of Harris, Gates & Company?

Mr. Gates: Yes, sir.

Mr. Cutcheon: At whose request?

Mr. Gates: John W. Gates.

Mr. Cutcheon: At what time was that request made of Harris, Gates & Company?

Mr. Gates: About 8:30 on the morning of the 11th.

Mr. Cutcheon: It is a fact that Mr. John W. Gates requested you, as a member of the firm of Harris, Gates & Company, to notify the New York Stock Exchange that the stock of the Louisville & Nashville Railroad would be loaned flat by your firm to anybody that wanted to borrow it to fulfill contracts?

Mr. Gates: Yes, sir.

Mr. Cutcheon: Did any person other than Mr. Gates or some member of the firm of Harris, Gates & Company request you to give such notice or take such action?

Mr. Gates: No.

Mr. Cutcheon: Prior to the time you gave it?

Mr. Gates: No, sir; as a partner of the firm I did it.

Mr. Cutcheon: What did you do in consequence of the request that Mr. J. W. Gates made of you?

Mr. Gates: I went to Mr. Frank J. Sturgis, whom I knew as one of the governors of the Stock Exchange and I gave him a letter addressed to the governors of the New York Stock Exchange, stat-

ing that so far as the firm of Harris, Gates & Company was concerned, there was no attempt to corner Louisville & Nashville stock and that they would gladly loan the stock to fulfill engagements until further notice.

Mr. Cutcheon: What did Mr. Sturgis say he would do with the letter?

Mr. Gates: Present it to the governors.

Mr. Cutcheon: Did you afterwards have any talk with any member of the governing committee of the New York Stock Exchange with reference to that?

Mr. Gates: Yes, sir.

Mr. Cutcheon: With whom?

Mr. Gates: With Mr. Rudolph Keppler, president of the New York Stock Exchange.

Mr. Cutcheon: Did you learn from Mr. Keppler that Mr. Sturgis had presented him that letter?

Mr. Gates: Yes, sir.

Mr. Cutcheon: Was anything announced through the medium of the New York Stock Exchange or over the news ticker as to your willingness to loan that stock that day?

Mr. Gates: Yes, sir; it was sent over the various wires to our various correspondents, of which there were some fifteen, I think, at the time, and it was spread broadcast on the New York Stock Exchange, I think, through Mr. Keppler.

Mr. Cutcheon: During that forenoon, did that become generally known?

Mr. Gates: Yes, sir.

Mr. Cutcheon: Did the substance of the announcement appear on the ticker?

Mr. Gates: I think so.

Mr. Cutcheon: Subsequent to that announcement, did you communicate any information in reference to it to any member of the firm of J. P. Morgan & Company?

Mr. Gates: Yes, sir.

Mr. Cutcheon: To whom?

Mr. Gates: Mr. Geo. W. Perkins.

Mr. Cutcheon: Did you tell him you had made the announcement?

Mr. Gates: Yes, sir.

Mr. Cutcheon: What did he say to you?

Mr. Gates: He was greatly pleased. He said it was an act—

Mr. Cutcheon: You had had no previous conversation with Mr. Perkins or any member of that firm on that subject?

Mr. Gates: No, sir.

Mr. Cutcheon: This announcement was made by you early in the morning, before the opening of the Stock Exchange, after a slight flurry in Louisville & Nashville that had occurred the day before?

Mr. Gates: Yes, sir.

Mr. Cutcheon: What was the motive that animated your father, if you know, and your firm in making that announcement?

Mr. Gates: Well, I had the following conversation with my father: I told him that I understood from various friends in the brokerage business that they were very apprehensive that the Northern Pacific episode would be repeated. He said, we do not want that. I said, there is only one way to get around it, to make a public announcement that we are not buying this stock to create a corner. He said, go ahead and see whoever you think necessary and put it in writing, because the rest of our friends and ourselves are long of the market, and we do not want to cause a panic.

Mr. Cutcheon: And to prevent any financial disturbances, you made the announcement?

Mr. Gates: Yes, sir.

Mr. Cutcheon: I think that is all on that subject.

Commissioner Yeomans: When did Harris, Gates & Company give the option to Morgan & Company?

Mr. Gates: On the 15th of April.

Commissioner Yeomans: How long did that run?

Mr. Gates: Well, the option is in evidence, I think. I think it was six months. That is my recollection.

Mr. Young: Your counsel stopped you when you said Mr. Perkins got as far as the word "act." Did you mean to say "act of magnanimity?"

Mr. Gates: Yes, sir.

Mr. Young: Then, you had control and could afford to be magnanimous?

Mr. Gates: Yes, sir.

Mr. Young: You had accomplished your purpose?

Mr. Gates: Yes, sir.

Mr. Young: You had a majority of shares of stock of the Louisville & Nashville?

Mr. Gates: Yes, sir.

Mr. Young: The street was scared, and you did not want to scare the street any more and you said you would not press your advantage?

Mr. Gates: Yes, sir.

Mr. Cutcheon: You could have demanded delivery to you of a great many thousand shares of Louisville & Nashville that day if you cared to, could you not?

Mr. Gates: Yes, sir.

Mr. Cutcheon: What would be the consequence of your action if you had so demanded?

Mr. Gates: I think we could have put Louisville & Nashville stock to any price we had seen fit—up.

Mr. Cutcheon: In other words, to put it into a single sentence, your purpose in this whole matter was to secure control of the Louisville & Nashville and not to cause any financial alarm or disturbance whatever?

Mr. Gates: Yes, sir.

Mr. Cutcheon: It is a fact, is it not, that it was not until you had bought substantially all the stock bought by Harris, Gates & Company and afterwards delivered to J. P. Morgan & Company that you knew or had reason to believe the Louisville & Nashville road had sold its own stock short or that the stock had been sold short for it?

Mr. Gates: Very close to that time.

Mr. Cutcheon: And you had no purpose of cornering Louisville & Nashville at any time?

Mr. Gates: No, sir.

Mr. Cutcheon: Or of squeezing anybody that had sold short?

Mr. Gates: No, sir.

Mr. Cutcheon: What you wanted was the stock and not anybody's money?

Mr. Gates: Yes, sir.

Mr. Cutcheon: You had associated with you or were co-operatingwith Edwin Hawley at that time?

Mr. Gates: Yes, sir.

Mr. Cutcheon: At the time that these negotiations were initiated and carried on?

Mr. Gates: Yes, sir.

Mr. Cutcheon: At the time this announcement was made?

Mr. Gates: Yes, sir.

Mr. Cutcheon: Mr. Hawley is a man of long railway experience, is he not?

Mr. Gates: Yes, sir.

Mr. Cutcheon: Traffic manager of the Southern Pacific?

Mr. Gates: Yes, sir.

Mr. Cutcheon: President of the Minneapolis & St. Louis?

Mr. Gates: Yes, sir.

Mr. Cutcheon: President of the Iowa Central?

Mr. Gates: Yes, sir.

Mr. Cutcheon: And chairman of the Board of the Colorado and Southern?

Mr. Gates: Yes, sir.

Mr. Cutcheon: A practical railroad man?

Mr. Gates: Yes, sir.

Mr. Cutcheon: That is all.

Commissioner Clements: Is your father a partner of the firm of Harris, Gates & Company?

Mr. Gates: He is not a general partner; he is a special partner.

Commissioner Clements: Are the individuals for whom your firm was buying stock members of the firm of Harris, Gates & Company?

Mr. Gates: No, sir.

Commissioner Clements: Any of them?

Mr. Gates: No, sir.

Commissioner Clements: That is all.

The Chairman: If there are no further questions to be asked Mr. Gates, he will be excused.

The witness was excused.

JOHN W. GATES.

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: You are a member of the firm of Harris, Gates & Company?

Mr. Gates: I am a special partner in the firm.

Mr. Young: What part did you have in the acquisition of the stock of the Louisville & Nashville Railroad, which, on the 15th of April, 1902, was sold, or on which an option was given J. P. Morgan & Company?

Mr. Gates: I was one of a syndicate interested in its purchase.

Mr. Young: Without giving the names, how many persons composed that syndicate?

Mr. Gates: I think there were fifteen or sixteen that were purchasing through Harris, Gates & Company. Mr. Hawley, or Hawley & Davis, had another syndicate, but we were working in harmony.

Mr. Young: How many shares of stock did you buy from the syndicate?

Mr. Gates: Personally?

Mr. Young: I mean your firm—Harris, Gates & Company?

Mr. Gates: I could not tell you.

Mr. Young: You subsequently sold out 206,000 shares, did you not?

Mr. Gates: The firm did.

Mr. Young: Now, when was this syndicate formed which entered into the purchase of this stock?

Mr. Gates: I think the latter part of March or about the first of April.

Mr. Young: That was before the firm of Harris, Gates & Company was organized, was it not?

Mr. Gates: No, sir.

Mr. Young: Was the firm of Harris, Gates & Company organized the first of March?

Mr. Gates: Yes, sir.

Mr. Young: What was the first step you took in that arrangement with the syndicate, Mr. Gates?

Mr. Gates: I saw several of my friends and told them I thought Louisville & Nashville was selling for less than its actual value, and suggested that we endeavor to buy enough stock to control the company.

Mr. Young: Was that agreement in writing?

Mr. Gates: It was reduced to writing later. At the primary talk there was nothing put in writing.

Mr. Young: Was this agreement so arranged that the parties in the syndicate could not sell the stock without the consent of the syndicate?

Mr. Gates: My recollection is that they could not sell the stock without the consent of Harris, Gates & Company.

Mr. Young: So you were practically controlling the whole matter, the firm of Harris, Gates & Company?

Mr. Gates: They were controlling 206,000 out of 306,000 shares.

Mr. Young: You bought the stock, and it could not be sold without the consent of Harris, Gates & Company?

Mr. Gates: No sir; it could not.

Mr. Young: When was the last stock you bought that entered into this 206,000 shares?

Mr. Gates: I have no knowledge of that.

Mr. Young: It was sometime before the 15th of April?

Mr. Gates: I should say between the 7th and 10th of April.

Mr. Young: Do you remember when you first began to acquire the stock?

Mr. Gates: I think in March.

Mr. Young: So, in about six weeks you had accomplished the purchase by your syndicate of 206,000 shares?

Mr. Gates: And operated with Mr. Hawley's syndicate to control the property.

Mr. Young: When did you enter the agreement with Hawley & Davis as to the control of their 100,000 shares?

Mr. Gates: Before we bought very much stock.

Mr. Young: What were they to do as to their part of this syndicate in the acquisition?

Mr. Gates: They were not to sell without our knowledge and consent, and we agreed to do the same.

Mr. Young: I suppose you had that in writing?

Mr. Gates: I think it was put in writing.

Mr. Young: What was done with the certificates of shares of stock of the Louisville & Nashville Railroad when they were bought by the firm of Harris, Gates & Company?

Mr. Gates: I presume they were paid for in the ordinary manner.

Mr. Young: I mean, what did you do with them after you got them?

Mr. Gates: I can not tell you the inner workings of Harris, Gates & Company or any other firm.

Mr. Young: Did Hawley & Davis bring any stock to Harris, Gates & Company or did they control it separately?

Mr. Gates: They controlled it.

Mr. Young: There was a written agreement?

Mr. Gates: I do not know whether there was a written agree-

ment. I said I thought there was, but I do not know of the actual existence of it.

Mr. Young: Did you have anything to do with the negotiation of the sale of this stock to J. P. Morgan & Company?

Mr. Gates: Yes, sir.

Mr. Young: Did they approach you or did you approach them?

Mr. Gates: They sent for me.

Mr. Young: Who came for you?

Mr. Gates: Charles M. Schwab, president of the United States Steel Company, came to my hotel and woke me up at two or three o'clock in the morning.

Mr. Young: What hotel was that?

Mr. Gates: The Waldorf-Astoria.

Mr. Young: Woke you up at two or three o'clock?

Mr. Gates: Yes, sir.

Mr. Young: Had you known Mr. Schwab before?

Mr. Gates: Yes, sir; for twenty years, I suppose.

Mr. Young: What did Mr. Schwab want of you at that unusual hour?

Mr. Gates: He said he was sent there by Messrs. J. P. Morgan & Company to see me.

Mr. Young: What did he say he wanted you to do?

Mr. Gates: I can not tell exactly. He wanted me to go to Morgan & Company's office in the morning.

Mr. Young: Do you remember the date of the interview between you and Mr. Schwab?

Mr. Gates: I suppose it was the 9th, 10th or 11th of April.

Mr. Young: Had the flurry come in Louisville & Nashville stock at that time?

Mr. Gates: The market had become somewhat nervous.

Mr. Young: Well, how nervous? To what price had it gone?

Mr. Gates: In the neighborhood of 130, I think.

Mr. Young: What price did you begin to buy it at?

Mr. Gates: I think about 105.

Mr. Young: What did Mr. Schwab say that Morgan & Company wanted with you?

Mr. Gates: That they wanted to talk with me about Louisville & Nashville matter.

Mr. Young: Did you go to meet them or did they come to you?

Mr. Gates: I told Mr. Schwab I did not think I cared to go there.

Mr. Young: What was the matter? Why did you not care to go, if it is a proper question? You need not answer if you do not want to.

Mr. Gates: I supposed my movements would be shadowed, and did not think it was policy for me to go there at the time.

Mr. Young: When you say "shadowed," do you mean that detectives would know where you had gone?

Mr. Gates: Newspaper men.

Mr. Young: Newspaper men? They are worse than detectives, you thought. You did not want the newspaper men to know you had gone? Did you go?

Mr. Gates: I finally went.

Mr. Young: How long did you hold out?

Mr. Gates: Be a little more explicit.

Mr. Young: After having received this invitation, what length of time transpired before you finally accepted it?

Mr. Gates: I asked my son to go over there the next morning.

Mr. Young: About what time in the morning?

Mr. Gates: I think before the Board opened.

Mr. Young: What did you ask your son to do?

Mr. Gates To see what they wanted.

Mr. Young: What did he report?

Mr. Gates: He came back and said that Mr. Perkins wanted to see me personally.

Mr. Young: Did Mr. Perkins come to you or did you go to Mr. Perkins?

Mr. Gates: I went over there.

Mr. Young: Who was present when you met him?

Mr. Gates: Mr. Perkins and Mr. Steele, I think.

Mr. Young: Tell us what transpired?

Mr. Gates: Well, it is a good while ago. I do not know that I could tell you.

Mr. Young: Well, refresh your memory and do the best you can.

Mr. Gates: They wanted to buy an interest and become a partner with us—that was his first proposition—in the deal.

Mr. Young: Had you ever had any dealing with J. P. Morgan & Company before that time?

Mr. Gates: Yes, sir.

Mr. Young: Did they tell you that morning that you were a dangerous man?

Mr. Gates: No, they did not.

Mr. Young: Go ahead and tell us what they told you.

Mr. Gates: Well, Mr. Perkins made a proposition. I do not remember the exact nature of it. I said, Mr. Perkins, there are a good many other people interested with me in this Louisville & Nashville deal.

Mr. Young: You said he made a proposition. What was the proposition?

Mr. Gates: He wanted a third interest at cost.

Mr. Young: What did you tell him about that?

Mr. Gates: I told him I would not think of it—of recommending it.

Mr. Young: Did he increase his offer?

Mr. Gates: He asked me to make a counter proposition.

Mr. Young: Did you do it?

Mr. Gates: I told him I could not do it without consulting my colleagues interested in the purchase, Harris, Gates & Company, and the firm of Hawley & Davis.

Mr. Young: At that time did you mention Hawley & Davis' name to them?

Mr. Gates: Yes, sir.

Mr. Young: What happened then?

Mr. Gates: He suggested that I get into communication with my people and for Mr. Hawley and myself to come and see him later.

Mr. Young: Did he tell you to do it quickly—how about the time?

Mr. Gates: He seemed rather anxious to trade.

Mr. Young: Did you then indicate to him when you could meet him again?

Mr. Gates: I did not, because I could not tell.

Mr. Young: What did you do?

Mr. Gates: I got into conference by telegraph, telephone or personally with as many of the people interested in the purchase of the Louisville & Nashville as I could, very promptly.

Mr. Young: When were you able to confer with Mr. Perkins again about it?

Mr. Gates: Well, my recollection is the next day.

Mr. Young: What time?

Mr. Gates: I think he sent for me the next morning.

Mr. Young: Early?

Mr. Gates: Yes, sir.

Mr. Young: How early?

Mr. Gates: I should say between half past nine and ten.

Mr. Young: That is rather an early hour on Wall street, is it not?

Mr. Gates: It is a little early for New Yorkers.

Mr. Young: Did you go?

Mr. Gates: Yes, sir.

Mr. Young: Where did you go?

Mr. Gates: To Morgan & Company's private office.

Mr. Young: Who was there?

Mr. Gates: Mr. Perkins, I think, alone the second time.

Mr. Young: What did you tell him and what did he tell you?

Mr. Gates: I told him, I think, that we wanted a little more time, that some of our people were not just agreed on what we ought to do.

Mr. Young: Is that all?

Mr. Gates: He urged me to hurry the matter, to be prompt as possible, and I romised him I would do so.

Mr. Young: Was that all that was said?

Mr. Gates: That is the substance.

Mr. Young: Was anything said about the acquisition of this property for any purpose, or did he simply want to be your partner in the deal?

Mr. Gates: He said he thought it was a very cheap property and a very valuable property.

Mr. Young: Did he say anything about your being a dangerous man to handle the property? Was that his object, or was it the profit in it?

Mr. Gates: Well, I usually find bankers after profits.

Mr. Young: They do not consider individuals, then?

Mr. Gates: Well, I do not know; some may.

Mr. Young: Did you go away then?

Mr. Gates: I remained in New York.

Mr. Young: I mean, you went away from his office?

Mr. Gates: Yes, sir.

Mr. Young: When did you see him the next time?

Mr. Gates: Well, probably the next day or the same afternoon. I could not tell you.

Mr. Young: Did you go by appointment or did he send for you?

Mr. Gates: He sent for me.

Mr. Young: Who did he send for you that time?

Mr. Gates: I think he called me on the telephone and asked me to come over. I think he had a cable from Mr. Morgan.

Mr. Young: Did you go?

Mr. Gates: Yes, sir.

Mr. Young: Did he show you the cable from Mr. Morgan?

Mr. Gates: I think he read me a portion of it.

Mr. Young: What did that say in reference to this matter?

Mr. Gates: Well, that they would like to be interested in the purchase on some fair basis.

Mr. Young: Is that all?

Mr. Gates: That is all he read to me.

Mr. Young: What did you do then at that meeting?

Mr. Gates: We did a great deal of negotiating, but came to no conclusion, I think.

Mr. Young: Had you conferred with your associates then?

Mr. Gates: As far as I could reach them.

Mr. Young: Did you make him any proposition about the purchase of an interest in this syndicate?

Mr. Gates: I think he made me a proposition.

Mr. Young: What was it?

Mr. Gates: That they buy one-third at 125 and get an option on the balance for a short time at 140. I think that was Mr. Perkin's first proposition.

Mr. Young: What object did he have in securing an option on the remainder after getting a one-third interest? Did he give any reason for it?

Mr. Gates: I do not think so.

Mr. Young: Did you know of any reason he had for it?

Mr. Gstea: No, I did not particularly.

Mr. Young: Did you know at that time of the control by J. P. Morgan & Company of the Southern Railway?

Mr. Gates: Only by common report.

Mr. Young: Was anything said at that time about the sale of this property to any other railroad?

Mr. Gates: No sir; I think not.

Mr. Young: Well, did you come to any conclusion at that meeting?

Mr. Gates: I think I told Mr. Perkins at that meeting that, subject to the unanimous ratification of all parties interested, I would

recommend the sale of a one-third interest at 130 and two-thirds at 150. Mr. Perkins said that that was entirely too much. I said I would not recommend the sale at any fraction below that figure.

Mr. Young: What did he do then?

Mr. Gates: He suggested that I again get into communication with my colleagues, including Mr. Hawley, who was at some of these conferences, and see whether we would be willing to make the trade on the basis of 130 and 150.

Mr. Young: Well, did you do it?

Mr. Gates: Yes, sir.

Mr. Young: Then what did you do?

Mr. Gates: Well, I think Mr. Perkins came to the hotel to see me.

Mr. Young: To the Waldorf-Astoria?

Mr. Gates: Yes, sir.

Mr. Young: At what hour did Mr. Perkins arrive there?

Mr. Gates: I think about five o'clock.

Mr. Young: Did you have a conference?

Mr. Gates: Yes, sir.

Mr. Young: Where?

Mr. Gates: In my room.

Mr. Young: How long did it last?

Mr. Gates: I think a couple of hours.

Mr. Young: What was the result of the conference?

Mr. Gates: I told him I thought our people would trade on the basis I had suggested

Mr. Young: Well, did he reach then a state of mind that he concluded to accept your offer?

Mr. Gates: I think he said he wanted to talk with his partners and Mr. Stetson and see if they could draw up papers that would be satisfactory to all.

Mr. Young: Well, what was the result of that?

Mr. Gates: Papers were drawn, I think, by Mr. Stetson and Hornblower, Byrne, Miller and Potter that were signed and executed on the 15th day of April.

Mr. Young: Did you ever have any negotiations with anybody else?

Mr. Gates: Yes, sir.

Mr. Young: For the acquisition of this property?

Mr. Gates: Yes, sir.

Mr. Young: Who was that?

Mr. Gates: Mr. Williams, President of the Seaboard Air Line.

Mr. Young: What relation had that conference as to time to the contract subsequently made between you and J. P. Morgan & Company?

Mr. Gates: I think our conference with Mr. Williams was somewhere between the 5th and 10th of April.

Mr. Young: You came to no conclusion with Mr. Williams about the matter at all?

Mr. Gates: No, sir.

Mr. Young: Now, I will ask you whether or not during any of those conferences anything was said about the relations of the Louisville & Nashville Railroad to other railroad properties in the South or the effect of your acquisition of this property on the railways of the South?

Mr. Gates: I do not think it was ever discussed.

Mr. Young: Was anything ever said about the traffic of the railways connected with the Louisville & Nashville Railroad and the effect of your acquisition or management of the Louisville & Nashville Railroad?

Mr. Gates: No, I think not.

Mr. Young: Had you ever managed any railways before?

Mr. Gates: No, sir; only a little one, a small road that I was interested in building. I have been interested in building several.

Mr. Young: At the time you acquired this property, did you feel yourself competent to manage it as successfully as Mr. Belmont and his associates had managed it?

Mr. Gates: I never had any idea of personally managing the Louisville & Nashville.

Mr. Young: When I say "management," I mean control, conducting its operations through a Board of Directors you might name with your associates.

Mr. Gates: I thought it was possible to employ talent that could operate it. In fact, I thought it was prettey well operated by Mr. Smith.

Mr. Young: Was that matter discussed by you with Morgan & Company or any of their representatives?

Mr. Gates: I think I told Mr. Perkins that I regarded Mr. Smith as a very able railroad man.

Mr. Young: You did discuss it to the extent that you said who you would have manage it for you if control was retained by you and your associates?

Mr. Gates: I think not.

Mr. Young: How did you come to mention Mr. Smith?

Mr. Gates: I regard Mr. Smith as a very able and conservative railroad man, and I think it came up in connection with the discussion as to the value of the property; and I thought if they had kept the construction account on their books and had not charged up a large amount of new construction to operating expenses, which the public was not generally aware of, that the property would have been selling at a higher figure. I think that is the way Mr. Smith's name came up in the transaction.

Mr. Young: In other words, you thought the book-keeping of the Louisville & Nashville Railroad had not been exactly fair to the stockholders?

Mr. Gates: I thought, so far as the general public was concerned, it was deceptive.

Mr. Young: That they earned more money than the books showed?

Mr. Gates: That they charged a good deal to operation that properly belonged to construction.

Mr. Young: Who was present when you executed this contract?

Mr. Gates: Mr. Stetson, Mr. Stotesbury, Mr. Perkins, Mr. Hubbard, Mr. Hawley, Mr. Davis, Mr. John F. Harris, one or two stenographers, Mr. Byrne and myself.

Mr. Young: Was any discussion of the contract had at that time?

Mr. Gates: I think I left the drawing up of the contract practically in the hands of Mr. Byrne of Hornblower, Byrne, Miller & Potter. He consulted with Mr. Harris more than he did with me, but with me occasionally.

Mr. Young: Was there anything said at this conference where the papers were executed in regard to the place this property should go—its control should go?

Mr. Gates: Nothing except what was in the contract, I believe.

Mr. Young: Mr. Gates, when this option was about to expire in October, were there any negotiations for its extension beyond the six months named in the contract itself?

Mr. Gates: There were some.

Mr. Young: Who were those had with?

Mr. Gates: Well, I had a conference with Mr. Morgan on the subject.

Mr. Young: Individually?

Mr. Gates: Yes, sir.

Mr. Young: Was anybody present but you and Mr. Morgan?

Mr. Gates: I think not.

Mr. Young: What extension did Mr. Morgan ask you to make of this option or right to purchase?

Mr. Gates: Well, he said they would like to have six months extension.

Mr. Young: You mean six months more after October?

Mr. Gates: After the 15th of October.

Mr. Young: Did he give you any reason for desiring this extension?

Mr. Gates: He said he had not been able to figure out a plan that just suited him.

Mr. Young: Did not Mr. Morgan in that conversation tell you that he desired or intended to form what was known as a Southern Securities Company, which would control a large number of railroads in the South. and if that company was formed you could put that stock in at 170, or words to that effect?

Mr. Gates: He used various arguments to get an extension.

Mr. Young: Well, Mr. Gates, was not that one of them?

Mr. Gates: I think Mr. Morgan said that if the Northern Sevurities case were decided favorably they might consider something of that kind.

Mr. Young: Did he not tell you that when that Southern Securities Company was formed you could put this stock in at 170?

Mr. Gates: He said he believed we would get more for our property by giving the extension.

Mr. Young: Was not the firm of Morgan & Company to be a partner in that matter and you to be a partner? Were not you to be jointly interested if the extension was given.

Mr. Gates: Well, the contract, I understand from the former hearing, is now in evidence and speaks for itself.

Mr. Young: You mean the original contract?

Mr. Gates: Yes, sir.

Mr. Young: I am talking about the conference where an extension was proposed to you. Did not Mr. Morgan in that conference, when asking an extension of the option, say to you that if the Northern Securities case went favorably to the Company, he would form a Southern Securities Company, and into that company you and J. P. Morgan & Company would go and you would get 170 for your stock?

Mr. Gates: He did not say that.

Mr. Young: Did he say anything like that?

Mr. Gates: He said if the Northern Securities case was decided favorably they might consider forming a Southern holding company.

Mr. Young: Then, what about this stock if that was done?

Mr. Gates: He thought it would net us more money.

Mr. Young: When he said "us," did he mean himself and you or you?

Mr. Gates: Under the terms of the contract Morgan & Company were obligated to return us the 100,000 shares of stock they had paid us for the rate of 130 on a certain day, unless they purchased the balance at 150 or submitted a plan which was satisfactory to us, in which we were willing to take the resultant securities in lieu of the cash. Therefore, after October 15, it would have been our option whether we would take back the 100,000 shares of Louisville & Nashville sold to Morgan & Company or not, at the purchase price and interest—I think four or five per cent. interest.

Mr. Young: You made delivery of the 100,000 shares at 130?

Mr. Gates: Yes, sir.

Mr. Young: And the other 206,000 were to be paid for at 150; otherwise the first was to be returned to you. Was anything said about the relations of J. P. Morgan & Company to the resultant profits in case the Southern Securities Company was formed?

Mr. Gates: I think Mr. Morgan desired that we should extend all the conditions of the April 15 trade six months.

Mr. Young: That applied to all the stock. Did Morgan & Company offer you part of the stock of the Atlantic Coast Line Company in payment of this stock?

Mr. Gates: I was in Europe at the time of the transaction.

Mr. Young: Do you know anything about it?

Mr. Gates: I do not.

Mr. Young: Who would know anything about it?

Mr. Gates: I suppose Harris, Gates & Company and Hawley & Davis would know.

Mr. Young: Who composed the firm of Harris, Gates & Company?

Mr. Gates: At the present time?

Mr. Young: No, at the time of this transaction.

Mr. Gates: John F. Harris, S. C. Scotten, Charles G. Gates, as general partners; I. L. Elwood, John Lambert, John DuPee and myself as special partners.

Mr. Young: You mean John DuPee of Chicago?

Mr. Gates: Yes, sir.

Mr. Young: I suppose the articles show to what extent the special partners are interested financially?

Mr. Gates: I think $150.000 apiece.

Mr. Young: There are four of them?

Mr. Gates: Yes, sir.

Mr. Young: That is all we desire to ask Mr. Gates.

The Chairman: Do counsel on the other side wish to ask Mr. Gates any questions?

Mr. Stetson: I have nothing.

The witness was excused.

Mr. Young: We will call Mr. Wasserman.

JESSE WASSERMAN,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Where do you reside, Mr. Wasserman?

Mr. Wasserman: In New York City.

Mr. Young: How long have you lived here?

Mr. Wasserman: Twenty-five years.

Mr. Young: What is your business?

Mr. Wasserman: Stock broker.

Mr. Young: With what firm are you connected, or were you connected in March, 1902?

Mr. Wasserman: Wasserman Brothers.

Mr. Young: Did you have anything to do with the acquisition or sale of the stock of the Louisville & Nashville Railroad, subsequently purchased by the Atlantic Coast Line?

Mr. Wasserman: Yes, sir.

Mr. Young: Did you know anything about any announcement made on the stock exchange by Harris, Gates & Company in regard to deliveries of Louisville & Nashville stock on the 10th or 11th of April?

Mr. Wasserman: About the delivery of the stock?

Mr. Young: Yes, sir.

Mr. Wasserman: Yes, sir.

Mr. Young: What do you know about it?

Mr. Wasserman: It was on the afternoon of the 10th, I went

to see Mr. Gates and I told him that things looked very bad in the street and were a little panicky and people were afraid of a corner and that I thought that it would be a good thing if they would lend the stock. He told me to come back in a half hour and he told me that afternoon when I came back that I should lend the stock flat to anybody that wanted it.

Mr. Young: Did you lend any?

Mr. Wasserman: I think I did.

Mr. Young: You have no financial connection with the firm of Harris, Gates & Company?

Mr. Wasserman: I was one of their correspondents in New York here.

Mr. Young: Were you making purchases for them?

Mr. Wasserman: I think so at times.

Mr. Young: Did you purchase any of this Louisville & Nashville stock for them?

Mr. Wasserman: I purchased a great many stocks and I suppose among others the Louisville & Nashville stock. I was in the general brokerage business.

Mr. Young: You were not present at any conference held by the firm of Harris, Gates & Company in regard to the disposition of this stock?

Mr. Wasserman: No, sir.

Mr. Young: Were you connected with it in any way whatsoever?

Mr. Wasserman: No, sir.

Mr. Young: Except as you have related?

Mr. Wasserman: Yes, sir.

Mr. Young: That is all I want to ask Mr. Wasserman.

The Chairman: If there are no further questions, Mr. Wasserman will be excused.

The witness was excused.

RUDOLPH KEPPLER,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: What connection have you with the New York Stock Exchange?

Mr. Keppler: I am President of that institution.

Mr. Young: How long have you been President?

Mr. Keppler: Nearly five years.

Mr. Young: Were you President in March, 1902?

Mr. Keppler: I was.

Mr. Young: Did you know anything as Governor of the Stock Exchange of New York in regard to the sale of the stock of the Louisville & Nashville by Harris, Gates & Company to J. P. Morgan & Company?

Mr. Keppler: I do not.

Mr. Young: Do you know anything about any announcement made by Harris, Gates & Company on the 10th of April in regard to the delivery or loaning of stock?

Mr. Keppler: What sort of announcement do you mean?

Mr. Young: Announcement on the Stock Exchange.

Mr. Keppler: There was no such announcement made.

Mr. Young: Do you know anything about any arrangement or statement made by the firm of Harris, Gates & Company?

Mr. Keppler: I do.

Mr. Young: Well, what was the statement?

Mr. Keppler: I called on the firm of Harris, Gates & Company on the morning of April 11, and saw there Mr. Gates, Senior, and after a few moments, Mr. Harris and Mr. Gates, Junior. I called there in my official capacity to call to their attention the critical condition of the Street, so called.

Mr. Young: That meant the market?

Mr. Keppler: That meant the market—with a view of dissuading them, if they so intended, from cornering Louisville & Nashville stock; that is, in other words, that they might loan the stock instead of insisting on the delivery of stock which I understood had been called in by them.

Mr. Young: Well, what did they do about it?

Mr. Keppler: Mr. Gates told me that they did not intend to produce any such state of affairs and were ready to accommodate borrowers of stock on that day. I asked him whether I could consider myself authorized to say that to any one, to which he answered yes; in fact that he desired that I should do so.

Mr. Young: Did you say it to any one?

Mr. Keppler: I said it to many. I made no official announcement of that fact on the Exchange. I caused a conservative, cautious reference to the subject to be made over the so-called News

Bulletin in order to allay and reassure the business people in the Street so far as that point was concerned.

Mr. Young: Was this visit of yours the result of any communication or conference with J. P. Morgan & Company?

Mr. Keppler: It was not.

Mr. Young: How did you come to go, Mr. Keppler?

Mr. Keppler: Because I thoroughly realized the critical condition of affairs and felt it my duty as the Chief Executive of the Stock Exchange to do what I could to avert any very serious crisis.

Mr. Young: And you did avert it?

Mr. Keppler: I do not know that I did.

Mr. Young: You were one of the means that led up to the quieting of the people on that subject?

Mr. Keppler: Possible.

Mr. Cutcheon: The notice that Harris, Gates & Company authorized you to make averted it?

Mr. Keppler: I am not prepared to say just what averted it. I am stating facts. I am not stating any opinions. You want me to state facts?

Mr. Cutcheon: Yes. sir.

Mr. Young: We do not care to ask Mr. Keppler anything further:

Mr. Cutcheon: That is all.

The witness was excused.

The Chairman: Do the defendants desire to produce any testimony?

Mr. Stetson: No, sir; not on anything thus far presented.

Mr. Young: We will call Mr. Culp.

J. M. CULP,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Mr. Culp, what relation do you hold to the Southern Railway?

Mr. Culp: I am fourth Vice-president.

Mr. Young: What relation do you hold to its traffic?

Mr. Culp: I am in charge of the Traffic Department.

Mr. Young: Then, you are Traffic Manager?

Mr. Culp: I am in charge of the Traffic Department. There are

also two Traffic Managers, one Freight Traffic Manager and one Passenger.

Mr. Young: They both report to you and are under your control as fourth Vice-president?

Mr. Culp: Yes, sir.

Mr. Young: How long have you held that position with the Southern Railway?

Mr. Culp: Since the 15th of March a year ago.

Mr. Young: Before you became fourth Vice-president what office did you hold with the Southern Railway?

Mr. Culp: Traffic Manager.

Mr. Young: How long did you hold that position?

Mr. Culp: Since the formation of the Southern Railway, July, 1894.

Mr. Young: Are you thoroughly familiar with the traffic situation south of the Ohio river?

Mr. Culp: Reasonably so.

Mr. Young: What points in the South are competitive points between the Louisville & Nashville and the Southern Railway?

Mr. Culp: A number of them.

Mr. Young: Let us begin West. It is so of St. Louis, is it not?

Mr. Culp: St. Louis, Evansville, Louisville, Decatur, Florence, Sheffield, Tuscumbia, Birmingham and the Birmingham district, Selma, Mobile, Anniston, Gadsden—those are practically all the points.

Mr. Young: You have neglected to put in Cincinnati.

Mr. Culp: The Southern Railway does not reach Cincinnati directly.

Mr. Young: It does over the Cincinnati Southern. If it is a joint owner with the C. H. & D. of the Cincinnati Southern it does.

Mr. Culp: I understand it does with the C. H. & D. control the Cincinnati Southern.

Mr. Young: Do not they have competition at Memphis?

Mr. Culp: Yes, sir.

Mr. Young: Through the old Charleston & Memphis road?

Mr. Culp: Yes, sir.

Mr. Young: Samuel Spencer is President of the Southern Railway and also of the Cincinnati, New Orleans and Texas Pacific, which controls the Cincinnati Southern, is he not?

Mr. Culp: He is President of both properties.

Mr. Young: Will you kindly state to the Commission what re-

lation as to competition the Atlantic Coast Line and the Louisville & Nashville Railroad have from your knowledge as a Traffic Manager of the South?

Mr. Culp: These are but two points reached by the rails of both lines, Montgomery, Alabama and River Junction, Florida,—but two points at which they directly compete.

Mr. Young: What about Atlanta?

Mr. Culp: The Louisville & Nashville does not reach Atlanta.

Mr. Young: Does the Louisville & Nashville reach Atlanta by the Nashville, Chattanooga & St. Louis and the Western & Atlantic? Do not they control these lines and have they not for years?

Mr. Culp: It is my understanding that they own a majority of the stock of the Nashville Chattanooga & St. Louis and that that road controls by lease the Western & Atlantic.

Mr. Young: In that way the Louisville & Nashville has a line into Atlanta and so has the Atlantic Coast Line?

Mr. Culp: By ownership of a majority of stock, yes, sir, but not as practically operated.

Mr. Young: Now, give us some idea of the business done out of Montgomery. They do both have a line into Montgomery, do they not—Atlantic Coast Line and Louisville & Nashville?

Mr. Culp: Yes, sir.

Mr. Young: What sort of business originates at Montgomery?

Mr. Culp: The business that originates from Montgomery is chiefly factory products—some cotton fabrics, some cotton-seed oil and the by-products.

Mr. Young: What about Atlanta—the character of business that originates at Atlanta?

Mr. Culp: Cotton factory products, cotton-seed oil, meal, fertilizers—some lumber is dressed there—some merchandise is shipped from there and quite a number of miscellaneous articles of manufacture are shipped from there.

Mr. Young: I would like to ask you whether or not from a railroad standpoint it would be beneficial to the Southern Railway to have the Atlantic Coast Line controlled by friendly interests or parties?

Mr. Culp: What is the question?

Mr. Young: I will ask the stenographer to repeat it.

The stenographer repeated the question, as follows: "I would like to ask you whether or not from a railroad standpoint it would

be beneficial to the Southern Railway to have the Atlantic Coast Line controlled by friendly interests or parties?"

Mr. Culp: I can not say. It might make it desirable to have it in the hands of friendly parties as against parties that were hostile or aggressive.

Mr. Young: You have heretofore testified before the Interstate Commerce Commission as to the competitive condition between the Atlantic Coast Line and the Louisville & Nashville Railroad, have you not?

Mr. Culp: Never that I recall as between the Atlantic Coast Line and Louisville & Nashville Railroad alone, I have between various roads in the South as a whole.

Mr. Young: Did not you testify before the Interstate Commerce Commission as to the competitive character or relations of the Plant System and the Louisville & Nashville?

Mr. Culp: Not that I recall. I might. If my attention were called to the case, I could state positively.

Mr. Young: Any statement you made then, if you did testify, is true now?

Mr. Culp: It is true now.

Mr. Young: And would apply to freight controlled by the Louisville & Nashville Railroad and the Atlantic Coast Line Line as now controlling the Plant System?

Mr. Culp: Not necessarily.

Mr. Young: Why?

Mr. Culp: Because if I testified as between the competition of all the railroads in the South or the various roads in the South, the competition between some of them would be greater than between others. The competition between some of them might be a minimum competition. The competition between the Atlantic Coast Line or the Plant System portion of it and the Louisville & Nashville Railroad is one of the minimum competition and would hereby be considered in comparison with those two lines as connections.

Mr. Young: Without going into fractions, there is competition and would be always between those two systems operated by independent parties?

Mr. Culp: Yes,; sir; not much more, though, than between any two systems that you might select. Even between systems that are unquestionably connections there is competition.

Mr. Young: Has the Southern Railway a line to Montgomery?

Mr. Culp: No.

Mr. Young: Has it a connection to Montgomery?

Mr. Culp: Yes, sir.

Mr. Young: What is it?

Mr. Culp: The Atlanta & West Point road from the East, the Mobile & Ohio from the West and could use the Louisville & Nashville and Western Railway of Alabama from the west.

Mr. Young: Does the Atlantic Coast Line control any lines that operate to Montgomery?

Mr. Culp: My understanding is that it has an interest in the Atlanta & West Point and the Western Railway of Alabama and controls a majority of the stock of the Louisville & Nashville.

Mr. Young: Is there any freight going out of Montgomery East that goes over the Louisville & Nashville Railroad, so far as you know?

Mr. Culp: My recollection of the traffic of the Louisville & Nashville is that there was very little business that went from Montgomery by the Louisville & Nashville to the East.

Mr. Young: What about the Southern Railway?

Mr. Culp: The Southern Railway through connections leading from Montgomery takes business from Montgomery to the East, but does not take business direct.

Mr. Young: But does from connection?

Mr. Culp: Yes, sir.

Mr. Young: The Atlantic Coast Line, through the Plant System, does the same thing, does it not?

Mr. Culp: The Atlantic Coast Line reaches Montgomery.

Mr Young: It reaches it through the Plant System?

Mr. Culp: It owns the Plant System.

Mr. Young: Yes; and it takes freight out of Montgomery East, does it not?

Mr. Culp: Yes, sir.

Mr. Young: The Southern does the same thing through its connections?

Mr. Culp: No; the Southern takes business its connections deliver to it.

Mr. Young: It makes competition between the Southern and its connections and the Atlantic Coast Line into Montgomery, does it not?

Mr. Culp: Yes, sir.

Mr. Young: Is not the same thing true of Atlanta? Does not

the Louisville & Nashville carry freight out of Atlanta and Birmingham East?

Mr. Culp: The Southern does, but the Louisville & Nashville does not reach Atlanta, but the Nashville, Chattanooga & St. Louis or the Western & Atlantic Railroad may take business.

Mr. Young: Is not that true of Birmingham also?

Mr. Culp: Yes, sir.

Mr. Young: So that so far as Birmingham, Atlanta, and Montgomery are concerned, the Atlantic Coast Line was a competitor of the Louisville & Nashville either directly or through its connections. That is so, is it not?

Mr. Culp: I do not think the Atlantic Coast Line was a competitor for Birmingham traffic. If it was, it was to a very slight extent. As to Atlanta, through the Georgia Railroad and as to Montgomery, through the Atlanta & West Point Railroad and the Georgia Railroad the business could go over the Atlantic Coast Line and in competition with the Southern Railway.

Mr. Young: Were you ever consulted about the acquisition of the Louisville & Nashville Railroad by the Atlantic Coast Line or by the Southern Railway people?

Mr. Culp: Never.

Mr. Young: Did none of the officers of the Southern Railway ever talk about it to you?

Mr. Culp: Never, that I recall.

Mr. Young: That is all.

Mr. Baxter: How long did you say you had been connected with the railroad traffic departments in the South?

Mr. Culp: I did not say. I said with the traffic department of the Southern Railway since July, 1894.

Mr. Baxter: How long with the Louisville & Nashville?

Mr. Culp: Almost twenty-one years prior to that.

Mr. Baxter: Do you regard yourself as reasonably familiar with the character of the general business done by the Louisville & Nashville Railroad and the Atlantic Coast Line Railroad?

Mr. Culp: I do.

Mr. Baxter: Now, looking to the general business of the Atlantic Coast Line Railroad and to the general business of the Louisville & Nashville Railroad as the same were conducted before the Atlantic Coast Line acquired a majority of the stock of the Louisville & Nashville Railroad, were those lines competitors or feeders of each other?

Mr. Culp: Rather feeders than otherwise. Especially is that true of the Coast Line System in the States of Georgia and Florida. I always regarded them as connections.

Mr. Baxter: What proportion would the business which was competitive between those systems bear to the business which gave to each other as feeders?

Mr. Culp: I can not name any figure, but the business for which they both competed with each other would have amounted to only a very small portion of that they interchanged with each other.

Mr. Baxter: If the Atlantic Coast Line, after it acquired the Plant System had not acquired a majority of the stock of the Louisville & Nashville Railroad, would the Atlantic Coast Line have had any line to the Northwest with which to protect its traffic between Florida and the Northwest?

Mr. Culp: It would have had to depend entirely upon the will or pleasure or whim of some connection to get to the West.

Mr. Baxter: What other lines besides the Atlantic Coast Line and the Louisville & Nashville Railroad compete for traffic at Montgomery?

Mr. Culp: The Atlanta & West Point, or rather the Western Railway of Alabama, the Seaboard Air Line, the Central of Georgia and the Mobile & Ohio.

Mr. Baxter: What lines other than the Atlantic Coast Line and Louisville & Nashville Railroad compete for traffic at Birmingham, Alabama?

Mr. Culp. The Central of Georgia, the Alabama Great Southern, the 'Frisco and the Southern Railway.

Mr. Baxter: What lines other than the Atlantic Coast Line and the Louisville & Nashville Railroad compete for traffic at Atlanta?

Mr. Culp: I have not yet stated that either one of those compete from Atlanta. As I construe it, they do not compete.

Mr. Baxter: Assuming it for the purpose of argument, what other competitive lines are there?

Mr. Culp: The Southern Railway, the Georgia Railroad, the Central of Georgia Railway, the Seaboard Air Line and the Atlanta & West Point. I think that is all.

Mr. Baxter: Since the Atlantic Coast Line acquired a majority of the stock of the Louisville & Nashville Railroad, have you received any orders, instructions or intimations, written or oral, from any one that indicated that the Atlantic Coast Line, the

Southern Railway and the Louisville & Nashville Railroad, or any two of them, are to be operated in harmony, so as to increase rates, diminish facilities or in any other way to restrict, diminish or restrain inter-State or State commerce?

Mr. Culp: Absolutely not; neither directly nor indirectly.

Mr. Baxter: Would not such orders, instructions or intimations, if they had been given, naturally come to you as the representative of the traffic department of the Southern Railway?

Mr. Culp: Yes, sir; in order to become effective or operative.

Mr. Baxter: It is charged in the petition in this case that the business of the Southern States will be dominated and controlled by a few individuals, who can at all times by the exercise of the extraordinary powers secured by this combination, arrangement and purchase, increase and change rates so as to affect and destroy the business of any one community, or any one city, and to change and alter the values of any one commodity, and to practically control and direct as such few individuals may determine the entire business, crops, mines, lands and products of all theses States through which these railroads are operated and used. Have you received any orders, instructions or intimations, oral or written, from any one or have you ascertained in any other way any fact indicating that any such domination as is charged in the petition exists or is contemplated to exist?

Mr. Culp: Absolutely not.

Mr. Baxter: That is all.

Mr. Young: Mr. Culp; I will get you to state whether before this commission in regard to competition between certain railways in the south you did not testify as follows in response to a question. Mr. Baxter asked Mr. Culp to state facts bearing upon the question of the reasonableness of rates from Chicago and the West to Wilmington. Mr. Culp said:

"If the Southern Railway and the Norfolk & Western Railway did not compete for business of Norfolk or Wilmington the rates to Norfolk would not be advanced, in my opinion. If the Chesapeake & Ohio alone competed for traffic from the West to Wilmington it would not pursue an unusual course if it made the rates to Wilmington its full tariff rate to Norfolk, not only from Chicago, but from Louisville, Cincinnati and St. Louis and other points, plus the full local rate from there if the competition would permit the rates to be adjusted on so high a basis, and when I say it would not be following an unusual course I have in mind the

facts that rates from the West to Southeastern territory—Alabama, Georgia and Florida—are made on a similar basis; that is to say, they are made on rates or proportional rates to the Ohio river added to rates from the Ohio river; likewise rates from points east of the Mississippi river to points west of the Mississippi river are made on a similar basis by taking the rates to the Mississippi river and adding them to the rates beyond. The same general principle of making rates to Wilmington from the west is followed as is used in making rates to Greensboro, Durham, Raleigh, Charlotte, Saulsbury, Asheville, and so forth, and the rates to Wilmington are less than the rates to those intermediate points because the competition has made them less. Now the rates from the West to Wilmington are, as I have said, generally speaking, lower than any combination of rates, and they are as low as they are to points that are in the State of North Carolina, generally speaking, and they are lower relatively than the rates that have been fixed by bodies authorized by law to fix rates within the territory of the South."

That is from pages 811 and 812 of that investigation. Is that correct or not?

Mr. Culp: I think that is a copy of what I testified to.

Mr. Young: Now, with the consent of the commission I have had copied from the testimony of the witnesses taken at the time certain statements were made by the witnesses which bear on this subject. I would like to have permission to put this in. It can be verified by the commission as to whether it is correct or not. It was sent to us by officers of the commission as testamentary bearing on the issues here. It was obtained at our request. It can be verified.

Mr. Baxter: We have no objection to that, provided the gentleman will read here now what he proposes to examine the witnesses on.

Mr. Young: I have read all I am going to ask Mr. Culp about.

The same is hereto annexted and marked Exhibit A. to Mr. Culp's testimony.

The Chairman: Have you the testimony of other witnesses who have not yet been called in this proceeding?

Mr. Young: Yes, sir.

The Chairman: Do you intend to call them?

Mr. Young: Yes, sir.

The Chairman: Then, why not reserve that until each witness is called?

Mr. Young: Would the commission consider this proof that has been taken in regard to this competition between certain railways in the South without calling the witnesses?

The Chairman: So far as this witness is concerned, you ask him if he testified so and so in a certain case, and he says yes.

Mr. Young: I file that now as part of his testimony with the commission's consent.

The Chairman: Now, you say that somebody else testified on this subject in some other proceeding before this commission.

Mr. Baxter: I am perfectly willing for anything of that kind to come into this case, provided I be allowed to cross-examine the witness on such points as are relevant to this case.

Mr. Young: You did then.

Mr. Baxter: I did with reference to that case.

The Chairman: Anything further?

Mr. Young. When you say there is not competition at Atlanta, you mean the Louisville & Nashville Railroad has physically no direct connection with Atlanta?

Mr. Culp: Yes, sir.

Mr. Young: Now. can not the competition be as thorough and complete when the Louisville & Nashville controls, as it does, the Nashville, Chattanooga & St. Louis and the Western & Atlantic?

Mr. Culp: Yes, sir; the competition between those lines leading out of Atlanta is probably as strong as if the Louisville & Nashville reached there direct.

Mr. Young: That would be true at all points where the Seaboard Air Line, the Atlantic Coast Line or the Southern control lines to the point of competition?

Mr. Culp: I would not want to answer that so broadly.

Mr. Young: So far as you know, it has been true?

Mr. Culp: At Atlanta it is true.

Mr. Young: Why would it be different at Montgomery, Memphis or Birmingham?

Mr. Culp: I would not regard the Atlantic Coast Line as a competitor out of Birmingham at all. It does compete for business out of Montgomery through connections.

Mr. Young: Mr. Baxter asked you if you had any orders. Has there been any change of freight rates in the South in the last year?

Mr. Culp: Yes, sir.

Mr. Young: Have they been decreased or advanced?

Mr. Culp: Generally decreased, but there has been no single change of rates growing out of a purchase of an interest in the Louisville & Nashville by the Atlantic Coast Line.

Mr. Young: I am not asking you that. Let the commission determine that. Has there been any increase on any products in the South the last year—to or from?

Mr. Culp: There has possibly been an increase in the rates on pig iron within the year. I do not recall any other within the year—there may have been—but there have been many reductions?

Mr. Young: What about cotton?

Mr. Culp: I do not recall any advance on cotton.

Mr. Young: What about coal?

Mr. Culp: I do not recall any advance in the rate on coal.

Mr. Young: Has there been no advance in the rate on coal the last four months at any point on your road?

Mr. Culp: I do not recall any. There has been no general advance.

Mr. Young: Well, that is all.

The witness was excused.

C. B. COMPTON,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: You reside in Louisville, Mr. Compton?

Mr. Compton: Yes, sir.

Mr. Young: You are traffic manager of the Louisville & Nashville?

Mr. Compton: Yes, sir.

Mr. Young: And have been so a number of years?

Mr. Compton. For the last two years.

Mr. Young You are entirely familiar with the freight situation in the south?

Mr. Compton: I think I am reasonably so—not entirely.

Mr. Young: I will ask you to state to the commission whether or not from Montgomery the Louisville & Nashville secures any freight East.

Mr. Compton: At Montgomery, Alabama, the Louisville &

Nashville Railroad carries very little business to the East; that which it carries consists almost entirely of cotton, and the movement of cotton is insignificant.

Mr. Young: Well, how insignificant?

Mr. Compton: Well, I had some information before me on the day I left Louisville indicating that we carried from Montgomery to Eastern spinning points about 1,300 bales.

Mr. Young: What about cotton-seed oil?

Mr. Compton: Cotton-seed oil—there is no business moves by the Louisville & Nashville Railroad from Montgomery to the East.

Mr Young: Is there no other freight moved from Montgomery to the East directly or over connections of the Louisville & Nashville Railroad?

Mr. Compton: There may be occasional shipments but the movement is extremely light.

Mr. Young: What about Atlanta?

Mr. Compton: The Louisville & Nashville does not reach Atlanta?

Mr. Young: It reaches Atlanta through the Nashville, Chattanooga & St. Louis and the Western & Atlantic, does it not?

Mr. Compton: From the West the Louisville & Nashville reaches Atlanta via the Southern Railway, the Nashville & Chattanooga Railroad, via Chattanooga and the Central of Georgia.

Mr. Young: The Louisville & Nashville does not move any freight from Chattanooga to Atlanta over the Southern Railway, does it? It moves no part of its freight—the freight which it controls—from Chattanooga to Atlanta over the Southern Railway?

Mr Compton: The Louisville & Nashville Railroad does not touch either Chattanooga or Atlanta. It does not undertake and can not undertake to handle any business between those points.

Mr. Young: Does not the through freight of the Louisville & Nashville Railroad, say, from Louisville and all points east or west, pass directly to Atlanta over the Louisville & Nashville to Nashville and then over the Nashville, Chattanooga & St. Louis, which it controls, to Chattanooga, and then from Chattanooga to Atlanta over the Western and Atlantic, which it also controls?

Mr. Compton: The Louisville & Nashville, in handling business from the West to Atlanta, Georgia, delivers a majority of its business to the Nashville & Chattanooga Railroad at Nashville. It delivers some of its business to the Southern Railway and other connections when destined to Atlanta.

Mr. Young: What proportion does it handle over the Southern Railway?

Mr. Compton: Well, relatively it would be small.

Mr. Young: Well, not more than one per cent., would it?

Mr. Compton: Yes, sir; it would be more than that.

Mr. Young: Well, how many per cent.?

Mr. Compton: I do not think I could approximate it, Mr. Young.

Mr. Young: You testified before the Commission in the matter of the Wilmington Tariff Association v. The Cincinnati, Portsmouth & Virginia Railroad and others, as shown by the two pages which I hand you—well, I will read it to you:

"Mr. Day: How do you route traffic from East St. Louis destined from Wilmington?

Mr. Compton: By Nashville & Atlanta.

Mr. Day: Chiefly that way?

Mr. Compton: Entirely so.

Mr. Day: Entirely so. Do you give freight to the Southern Railway at Louisville?

Mr. Compton: We compete with the Southern Railway at Louisville. We try to take it away from them.

Mr. Day: I mean freight that comes up the Mississippi river to Louisville; you there turn it over to the Southern for, say the Virginia cities?

No response.

The Chairman: Does what you say come to this, that traffic going to Norfolk, goes either by the Norfolk & Western or the Chesapeake & Ohio exclusively, so far as your road is concerned?

Mr. Compton: Except points south of Memphis.

The Chairman: In going to Wilmington, it does not go by either of these roads?

Mr. Compton: In going to Wilmington, from Louisville and Cincinnati, it goes through the Virginia cities. If it is from the lower Ohio river points, we send it by Nashville or Atlanta to Wilmington.

The Chairman: So that traffic reaches Wilmington by way of Richmond or by way of Atlanta?

Mr. Compton: Yes, sir.

The Chairman: So far as your road is concerned, do you participate in traffic that reaches Wilmington by both Richmond and Atlanta?

Mr. Compton: From Louisville and Cincinnati when we secure business for Wilmington, we do not send it by Nashville and Atlanta.

The Chairman: That would all go by way of Richmond?

Mr. Compton: Yes, sir; if we secure business from Ohio river points west of Louisville, we would send it by Nashville and Atlanta, because we get more revenue out of it."

Mr. Young: Did you testify that way before the Commission in that matter?

Mr .Compton: I testified in the Wilmington case. If this is a transcript from that testimony—

Mr. Young: Do you see any reason to doubt its correctness?

Mr. Compton: I do not know of any reason to doubt it.

Mr. Young: I will get you to file that and make it part of your deposition in this case.

Mr. Compton: I will be glad to do so, provided I am permitted to have it verified.

Mr. Young: Certainly. I shall be glad to have it verified. It was sent to us by the secretary of the Commission. That is all, so far as we are concerned.

The same is hereto annexed and marked "Exhibit A to Mr. Compton's testimony."

Mr. Baxter: How long have you been connected with the Louisville & Nashville Railroad?

Mr. Compton: Thirty-two years.

Mr. Baxter: In what capacity?

Mr. Compton: In various capacities, from clerkships to agencies—general freight and traffic manager.

Mr. Baxter: Your duties during all that time have been connected with the freight department, have they not?

Mr. Compton: Yes, sir; entirely.

Mr. Baxter: Have you a general knowledge of the business done by the Louisville & Nashville Railroad and by the Atlantic Coast Line?

Mr. Compton: I feel that I have.

Mr. Baxter: Now, looking to the general business of the Atlantic Coast Line Railroad and to the general business of the Louisville & Nashville Railroad as the same were conducted before the Atlantic Coast Line acquired a majority of the stock of the Louisville & Nashville Railroad, were these lines competitors or feeders of each other?

Mr. Compton: They were feeders of each other and insignificant competitors.

Mr. Baxter: What proportion would the business which was competitive between those systems bear to the business they gave to each other as feeders?

Mr. Compton: It would be insignificant.

Mr. Baxter: If the Atlantic Coast Line had not acquired a majority of the stock of the Louisville & Nashville Railroad, would the Atlantic Coast Line have had any line to the northwest with which to protect its traffic passing between Florida and the north-West—I mean after the Atlantic Coast Line acquired the Plant System?

Mr. Compton: No, sir.

Mr. Baxter: Since the Atlantic Coast Line acquired a majority of the stock of the Louisville & Nashville Railroad, have you, as traffic manager of the Louisville & Nashville Railroad received any orders, instructions or intimations, written or oral, from any one that indicated that the Atlantic Coast Line, the Southern Railway and the Louisville & Nashville Railroad or any two of them are to be operated in harmony so as to increase rates, diminish facilities or in any other way restrict, diminish or restrain interstate or State commerce?

Mr. Compton: None whatever.

Mr. Baxter: Is your position such that if any such orders, instructions or intimations had been given, they would have had te pass through you to become effective?

Mr. Compton: Yes, sir.

Mr. Baxter: It is charged in the petition that the business of the Southern States will be dominated and controlled by a few individuals who can at all times, by the exercise of the extraordinary powers secured by this combination, arrangement and purchase, increase and change rates so as to affect and destroy the business of any one community, or any one city, and to change and alter the values of any one community, and to practically control and direct as such few individuals may determine the entire business, crops, mines, land and products of all these States through which these railroads are operated and used. Have you, as traffic manager of the Louisville & Nashville Road, received any orders, instructions or intimations, oral or written, from any one, or have you ascertained in any other way any facts indicating that any

such domination as is charged in the petition exists or is contemplated to exist?

Mr. Compton: Absolutely none.

Mr. Baxter: Has your position been such that if such orders, intimations or instructions had been given they would have to pass through you in order to become effective in the operation of the road?

Mr. Compton: Yes, sir.

Mr. Baxter: That is all.

Mr. Young: You have no idea what is going to happen in the future, have you?

Mr. Compton: No, sir; not the remotest.

Mr. Young: No railway man can predict the future?

Mr. Compton: I think not.

Mr. Young: That is all.

The witness was excused.

T. M. EMERSON,

a witness on behalf of the complainant, having been duly sworn, testified as follows:

Mr. Young: Mr. Emerson, what position do you hold with the Atlantic Coast Line?

Mr. Emerson: Third Vice-president, in charge of traffic.

Mr. Young: Are you still holding that position?

Mr. Emerson: I am.

Mr. Young: I will get you to state whether before this Commission on the 22d of May, 1899, you testified as follows in response to a question from Commissioner Clements:

"Commissioner Clements: How long have these rates been in effect substantially as they are to Norfolk and Wilmington from the West, the rate in controversy?

"Mr. Emerson: For a great number of years; of course the totals have been changed at both points from time to time, but the general relation, the basis, has been in effect there certainly since the passage of the Interstate Commerce Act.

"Commissioner Clements: Well are they the rates that were established the basis in relation to rates and the rates themselves that were originally established by the agreement of the lines?

"Mr. Emerson: They have been changed from that. They have been changed in many instances.

"Commissioner Clements: Changed by the independent action of the single lines?

"Mr. Emerson: All rates are changed by independent action in our territory. That is each line has the independent right to change the rate and the other adopts it if they see proper.

"Commissioner Clements: Do they in fact do it that way?

"Mr. Emerson: Yes, as a matter of fact, it is done that way.

"Commissioner Clements: You stated, I believe that the through rate in which you participate are published by Mr. Parrot, Commissioner of the Southeastern?

"Mr. Emerson: Chairman of the Southeastern Freight Association, I should have said.

"Commissioner Clements: How does he publish them?

"Mr. Emerson: He publishes them as an individual representative of each line that is a party to them. If we desire a change in a rate in our territory we notify Chairman Parrot or the conference committee if in session. We hear their objections, if they do object, and we consider them. If their objections are of force and reason, it may cause us to change our minds. If not we can and do give notice to Mr. Parrot as Chairman to publish the rate for our lines. Any other lines competing with us has a right to notify that Chairman to issue it for his line. We have rates issued by Mr. Parrot good over some of the lines and some good over all of the lines. Now, Mr. Parrot is authorized to file these rates for us as agent with the Interstate Commerce Commission by special letter written and filed with this Commission. Therefore I referred to that tariff as I think it will give Mr. Day the information he desires."

Mr. Young: Did you so testify on that day?

Mr. Emerson: To the best of my recollection, I did.

Mr. Young: Just file that with the Commission.

The same is hereto annexed and Marked Exhibit A. to Mr. Emerson's testimony.

Mr. Young: That is all I desire to ask Mr. Emerson.

Mr. Baxter: How long have you been connected with the Traffic Department of the Atlantic Coast Line?

Mr. Emerson: Continuously since 1882, with the exception of a year; preceding August, 1882, seven years.

Mr. Baxter: Do you regard yourself as reasonably familiar with

the business of the Atlantic Coast Line and the general business of the Louisville & Nashville?

Mr. Emerson: Yes, sir; I should say I am generally familiar with it.

Mr. Baxter: Looking to the general business of the Atlantic Coast Line and the general business of the Louisville & Nashville Railroad as the same were conducted before the Atlantic Coast Line acquired a majority of the stock of the Louisville & Nashville Railroad, were those roads competitors or feeders of each other?

Mr. Emerson: They were most undoubtedly feeders in the broadest acceptation of the term. They were competitors in a very limited degree.

Mr Baxter: What proportion in your opinion would the business that was competitive between those systems bear to the business they gave each other as feeders?

Mr. Emerson: It would be a very small proportion; that is, the business we would give each other would be materially larger than any business we might compete for, directly or indirectly.

Mr. Baxter: Mr. Emerson, as the representative of your traffic department, did you suggest to Mr. Walters at any time the propriety or necessity of acquiring a line from Montgomery to the Northwest in order to protect your Florida traffic after the acquisition by your system of the Plant Line, and, if so, state what you said in that regard.

Mr. Emerson: I had several discussions with Mr. Walters, the Vice-President, and also with Mr. Elliott, the President of the Road in line with that. I recall one conversation had with Mr. Walters, in which I felt it my duty, as I explained to him, as traffic manager of his property to call attention to the necessity, because of the purchase of the Plant System by the Atlantic Coast Line and thereby acquiring interest in territory differing materially from the old Atlantic Coast Line Territory— as I say, I called his attention to the necessity of having an outlet to the Northwest. What was formerly known as the Plant System, and which is now the second traffic division of the Atlantic Coast Line Railroad Company, produces a great deal of lumber, phosphate-rock, naval stores, fruits and vegetables, which are absolutely dependent for a market on points in the West and Northwest, while on the other hand the communities in that vicinity are dependent on the market of the West and Northwest for their meats, grain, hay, feed and similar articles. I stated to him that it appeared to me from a traffic standpoint that it was

absolutely necessary, in order to protect the traffic which I had related, that the Atlantic Coast Line Railroad Company must own or control a line to the Ohio river or even farther west than the Ohio river on the same ground. I called his attention to the fact that it could be done, or probably I put it more emphatic than that, that it should be done, either by building a connection with some other line not touching our rails or by the purchase of the Louisville & Nashville Railroad, there having been some agitation in the papers that it had changed ownership and probably would be for sale. I say I repeated that conversation on many occasions to our President and I believed then and believe now it was absolutely necessary for the protection of the traffic of the Atlantic Coast Line as against any unfriendly action on the part of its connections that existed then or might exist in the future to control a line that would give them an outlet from that territory and an outlet from the Southeastern section.

Mr. Baxter: I understand that you not only then thought it was necessary, but that is your opinion now?

Mr. Emerson: Absolutely. I am more convinced every day of my life.

Mr. Baxter: Since the Atlantic Coast Line acquired a majority of the stock of the Louisville & Nashville Railroad, have you, as officer in charge of the traffic of the Atlantic Coast Line received any orders, instructions or intimations, written or oral, from any one, indicating to your mind that the Atlantc Coast Line, the Southern Railway and the Louisville & Nashville Railroad are to be operated in harmony so as to increase rates, diminish facilities or in any other way restrict, diminish or restrain interstate or State commerce?

Mr. Emerson: None whatever.

Mr. Baxter: Has your position been such that any such orders, instructions or intimations would have to pass through you to be effective?

Mr. Emerson: I so understand it.

Mr. Baxter: It is charged in the petition that the railroads of the Southern States are dominated and controlled by a few individuals who can at all times by the exercise of the extraordinary powers secured by this combination, arrangement and purchase, increase and change rates so as to affect and destroy the business of any one community or any one city, and to change and alter the values of any one commodity, and to practically control and direct as such few individuals may determine the entire business, crops,

mines, lands and products of all these States through which these railroads are operated and used. Have you received any orders, instructions or intimations, oral or written, from anyone, or have ascertained in any other way any fact indicating that such domination as is charged in the petition exists or is contemplated to exist?

Mr. Emerson: I have not.

Mr. Baxter: Has your position been such that any orders, instructions or intimations of that character would have to pass through you?

Mr. Emerson: I so understand—to become effective they would have to pass through me.

Mr. Baxter: That is all.

Mr. Young: We have nothing further.

Commissioner Clements: Is there not a large and important territory north of the Ohio river—take Buffalo, Pittsburg and that region—from which freight moves to the South, to such points as Atlanta, Birmingham, Selma and other points in that territory, in Georgia, Alabama and Florida, either by the Eastern Lines or the Ohio river gateways?

Mr. Emerson: Taking Montgomery, my understanding is that the Louisville & Nashville does a limited amount of traffic to and from the territory you name and Montgomery. The Atlantic Coast Line does more or less of that traffic. In fact, it is working for that traffic. Take Atlanta, we do not attempt and can not from our geographical location do any business from the West to Atlanta and we do not attempt to do it, nor have we for a long time even preceding the changed conditions.

Commissioner Clements: Does not the Pennsylvania road, which reaches that territory bring freight to the Southern and the Coast Line?

Mr. Emerson: They do from Pittsburg and points East. We handle a very limited amount of business from Pittsburg into the Atlanta territory. When you come to Birmingham, we handle business from New York to Birmingham in connection with the Louisville & Nashville. It has been part of our business via. Atlanta and Montgomery.

Commissioner Clements: I am speaking of all the Eastern Lines. Take the Atlantic Coast Line, the Southern Railway and the Seaboard Air Line with their connections, are not each one of them a link in carrying a large amount of business from Northern territory to Southern territory?

Mr. Emerson: They are.

Commissioner Clements: Is not the same thing true in respect to the Louisville & Nashville and the Southern from the Ohio river —both ways?

Mr. Emerson: They are competitors from the Ohio river into the South, as I understand it.

Commissioner Clements: Is it not true on freight moving north, like cotton, lumber and other southern products?

Mr. Emerson: Yes, sir; it can not move by the Eastern lines; at least it does not move by our line to Chicago or Cincinnati, because we have no practicable routes of getting it there.

Commissioner Clements: I mean to Buffalo and Pittsburg?

Mr. Emerson: Yes, sir.

Commissioner Clements: When freight comes to you from points you do not reach, you form a link in handling it, I suppose?

Mr. Emerson: We do.

Commissioner Clements: And when it is moved to the Ohio river gateways, either north or south, the Louisville & Nashville is an important link in the movement of the freight, it is not?

Mr. Emerson: It is between the markets between which it competes.

Commissioner Clements: When moving by Eastern lines entirely, your road and the Seaboard and the Southern are important links?

Mr. Emerson: Between all markets between which we attempt to handle traffic, yes, sir.

Commissioner Clements: If there were a material reduction in the rates on all classes from Atlanta, Selma and Montgomery and other places in that territory by the roads from Chicago to that territory, would not that result in a necessary reduction by the Eastern roads from New York and other Eastern markets where the same lines of goods are carried? You have to meet their rates, would you not?

Mr. Emerson: Not necessarily. On some articles we might.

Commissioner Clements: I mean articles that can be shipped as well from Chicago or other Western points as from Eastern points.

Mr. Emerson: It might and might not reduce them.

Commissioner Clements: Is there any competition between those markets?

Mr. Emerson: On certain articles a reduction of some of those rates might cause other lines to reduce from other points.

Commissioner Clements: Did not the Southern roads, including the Louisville & Nashville, the Atlantic Coast Line, the Seaboard Air Line and the Southern Railway, in former years continue a contract from year to year by which the rates were made a certain per cent. of each other, regulated so that the rate from Baltimore should bear a certain relation to the rate from Cincinnati and so from New York and Chicago?

Mr. Emerson: No, sir; not on a percentage basis at all. There was a relative adjustment years ago whereby, according to my recollection, the rates from Louisville to Atlanta bore a specific relation to the rates between Baltimore and Atlanta?

Commissioner Clements: Does that extend to other points?

Mr. Emerson: The rate from New York has been a specific number of cents higher than the Baltimore rate and Philadelphia a specific number of cents, but not on the percentage basis.

Commissioner Clements: The arrangements were made by the conference and association of all the Southern roads, were they not?

Mr. Emerson: Many years ago, yes, sir.

Commissioner Clements: And did they not also agree on a certain territorial line leading, for instance, from Buffalo to Pittsburg and so arrange the rates that the traffic that originated east of that line should move by Eastern roads and west of that line by the Ohio river gateways?

Mr. Emerson: They had in the old days a clause of that nature.

Commissioner Clements: And a line in the South for the same purpose?

Mr. Emerson: Yes, sir; they have. Those clauses, I might add, have not only been done away with in theory, but in fact.

Commissioner Clements: Does it not in fact move about the same way now as before?

Mr. Emerson: Very nearly so, because, as I say, we have in times past done some little traffic from a Western point around by Richmond to a Georgia point. We found it not only undesirable from a revenue point of view but in many other ways, and we abandoned it of our own volition.

Commissioner Clements: That is all.

The Chairman: Anything further, Mr. Baxter?

Mr. Baxter: No, sir.

Mr. Young: Nothing further from us. May it please the Commission, some of our witnesses have not responded and we would

like to have it ordered that on proper notice we may take deposition at Louisville or elsewhere.

The Chairman: The witnesses subpoenaed to-day have not appeared?

Mr. Young: George E. Lewis is the principal one.

The Chairman: Who is Mr. Lewis, and for what purpose is he wanted?

Mr. Young: He is traffic manager of what is called the Frankfort & Louisville road. It is a road from Frankfort to Paris, Ky., and the operation and control of that road has a bearing on this question. We can take Mr. Lewis' deposition in Louisville some time.

The Chairman: I noticed some other names on the list.

Mr. Young: We have waived those.

The Chairman: Have the witnesses been so informed that they need not remain in attendance?

Mr. Young: Yes, sir. The only witness subpoenaed whose deposition we want to take is Mr. Lewis.

The Chairman: Will that conclude your testimony, the examination of Mr. Lewis?

Mr. Young: No, sir; we will probably take the testimony of some other witnesses in Louisville.

The Chairman: Mr. Baxter, do any of your people know where Mr. Lewis is?

Mr. Baxter: No, sir; I never saw him.

The Chairman: Who is Mr. Lewis on the list of witnesses Mr. McChord?

Mr. McChord: My understanding is that he owns the Frankfort & Louisville Railway running from Frankfort to Paris. It is a competitor with the Cincinnati Southern. I do not know him personally. A subpoena was issued and executed on him.

Mr. Young: We can take his deposition any time and will not ask the Commission to sit to hear him. We are through so far as to-day is concerned. Any further proof we will take on notice after the 15th of April, to the other side.

The Chairman: Very well. That concludes the testimony of witnesses you desire to examine here now?

Mr. Young: Yes, sir.

The Chairman: And the balance of your witnesses you will examine unless we are otherwise notified, by deposition?

Mr. Young: Yes, sir.

The Chairman: And that will not be before the 15th of April?

Mr. Young: No, sir.

The Chairman: And after that you will arrange some time for the argument of the case at Washington?

Mr. Young: Yes, sir.

The Chairman: Very well. If there is no occasion for continuing the session we will adjourn now.

At 1:35 o'clock p. m. the Commission adjourned.

Appendix "C"

LAWS OF KENTUCKY

DEFINING THE

POWERS AND DUTIES

OF THE

COMMISSION.

CONSTITUTIONAL PROVISIONS.

Extracts from the Constitution Relating to Railroads.

RAILROADS AND COMMERCE.

§ 209 A commission is hereby established, to be known as "The Railroad Commission," which shall be composed of three Commissioners. During the session of the General Assembly, which convenes in December, eighteen hundred and ninety-one, and before the first day of June, eighteen hundred and ninety-two, the Governor shall appoint, by and with the advice and consent of the Senate, said three commissioners, one from each superior court district, as now established, and said appointees shall take their office at the expiration of the terms of the present incumbents. The commissioners so appointed shall continue in office during the present term of the present Governor, and until their successors are elected and qualified. At the regular election in eighteen hundred and ninety-five, and every four years thereafter, the commissioners shall be elected, one in each superior court district, by the qualified voters thereof, at the same time and for the same term as the Governor. No person shall be eligible to said office unless he be, at the time of his election, at least thirty years of age, a citizen of Kentucky two years, and a resident of the district from which he is chosen one year next preceding his election. Any vacancy in this office shall be filled as provided in section one hundred and fifty-two of this Constitution. The General Assembly may, from time to time, change said districts so as to equalize the population thereof; and may, if deemed expedient, require that the commissioners be all elected by the qualified voters of the State at large. And if so required, one commissioner shall be from each district. No person in the service of any railroad or common carrier company, or corporation, or of any firm or association conducting business as a common carrier, or in any wise pecuniarily interested in such company, corporation, firm or association, or in the railroad business, or as a common carrier, shall hold such office. The powers and duties of the railroad commissioners

shall be regulated by law, and until otherwise provided by law the commission so created shall have the same powers and jurisdiction, perform the same duties, be subject to the same regulations, and receive the same compensation as now conferred, prescribed and allowed by law to the existing railroad commissioners. The General Assembly may, for cause, address any of said commissioners out of office by similar proceedings as in the case of Judges of the Court of Appeals; and the General Assembly shall enact laws to prevent the non-feasance and mis-feasance in office of said commissioners, and to impose proper penalties therefor.

§ 210. No corporation engaged in the business of common carrier shall, directly or indirectly, own, manage, operate or engage in any other business than that of a common carrier, or hold, own, lease or acquire directly or indirectly, mines, factories or timber, except such as shall be necessary to carry on its business; and the General Assembly shall enact laws to give effect to the provisions of this section.

§ 211. No railroad corporations organized under the laws of any other State, or of the United States, and doing business, or proposing to do business, in this State, shall be entitled to the benefit of the right of eminent domain, or have power to acquire the right of way or real estate for depot or other uses, until it shall have become a body-corporate, pursuant to and in accordance with the laws of this Commonwealth.

§ 212. The rolling stock and other movable property belonging to any railroad corporaton or company in this State shall be considered personal property and shall be liable to execution and sale in the same manner as the personal property of individuals. The earnings of any railroad company or corporation, and choses in action, money and personal property of all kinds belonging to it, in the hands or under the control of any officer, agent or employe of such corporation or company, shall be subject to process of attachment to the same extent and in the same manner as like property of individuals when in the hands or under the control of other persons. Any such earnings, choses in action, money or other personal property may be subjected to the payment of any judgment against such corporation or company, in the same manner and the same extent as such property of individuals in the hands of third persons.

§ 213. All railroad, transfer, belt lines and railway bridge companies, organized under the laws of Kentucky, or operating,

maintaining or controlling any railroad, transfer, belt lines or bridges, or doing a railway business in this State, shall receive, transfer, deliver and switch empty or loaded cars, and shall move, transport, receive, load or unload all the freight in car loads or less quantities, coming to or going from any railroad, transfer, belt, line, bridge or siding thereon, with equal promptness and dispatch, and without any discrimination as to charges, preference, drawback, or rebate in favor of any person, corporation, consignee or consignor, in any matter as to payment, transportation, handling or delivery; and shall so receive, deliver, transfer and transport all freight as above set forth, from and to any point where there is a physical connection between the tracks of said companies. But this section shall not be construed as requiring any such common carriers to allow the use of its tracks for the trains of another engaged in like business.

§ 214. No railway, transfer, belt line or railway bridge company shall make any exclusive or preferential contract or arrangement with any individual, association or corporation, for the receipt, transfer, delivery, transportation, handling, care or custody of any freight, or for the conduct of any business as a common carrier.

§ 215. All railway, transfer, belt lines or railway bridge companies shall receive, load, unload, transport, haul, deliver and handle freight of the same class for all persons, associations or corporations from and to the same points and upon the same conditions, in the same manner and for the same charges, and for the same method of payment.

§ 216. All railway, transfer, belt lines and railway bridge companies shall allow the tracks of each other to unite, intersect and cross at any point where such union, intersection and crossing is reasonable or feasible.

§ 217. Any person, association or corporation, willfully or knowingly violating any of the provisions of sections two hundred and thirteen, two hundred and fourteen, two hundred and fifteen, or two hundred and sixteen, shall, upon conviction by a court of competent jurisdiction, for the first offense, be fined two thousand dollars; for the second offense, five thousand dollars, and for the third offense, shall thereupon, *ipso facto*, forfeit its franchises, privileges or charter rights; and if such delinquent be a foreign corporation, it shall, *ipso facto*, forfeit its rights to do business in this State; and the Attorney-General of the Common-

wealth shall forthwith, upon notice of the violation of any of said provisions, institute proceedings to enforce the provisions of the aforesaid sections.

§ 218. It shall be unlawful for any person or corporation, owning or operating a railroad in this State, or any common carrier, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier, or person or corporation, owning or operating a railroad in this State, to receive as great compensation for a shorter as for a longer distance: Provided, That upon application to the Railroad Commission, such common carrier, or person, or corporation owning or operating a railroad in this State, may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may, from time to time, prescribe the extent to which such common carrier, or person or corporation, owning or operating a railroad in this State, may be relieved from the operations of this section. (51 S. W. Rep., 164, 1012.)

GENERAL PROVISIONS.

§ 54. The General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or from injuries to person or property.

§ 241. Whenever the death of a person shall result from an injury inflicted by negligence or wrongful act, then, in every such case, damages may be recovered for such death, from the corporations and persons so causing the same. Until otherwise provided by law, the action to recover such damages shall, in all cases be prosecuted by the personal representative of the deceased person. The General Assembly may provide how the recovery shall go and to whom belong; and until such provision is made the same shall form part of the personal estate of the deceased person.

§ 242. Municipal and other corporations, and individuals invested with the privilege of taking private property for public

use, shall maks just compensation for property taken, injured or destroyed by them; which compensation shall be paid before such taking, or paid or secured at the election of such corporation or individual, before such injury or destruction. The General Assembly shall not deprive any person of an appeal from any preliminary assessment of damages against any such corporation or individual made by commissioners or otherwise; and upon appeal from such preliminary assessment, the amount of such damages shall, in all cases, be determined by a jury according to the course of the common law.

§ 244. All wage-earners in the State employed in factories, mines, workshops, or by corporations, shall be paid for their labor in lawful money. The General Assembly shall prescribe adequate penalties for violations of this section.

KENTUCKY STATUTES.

GENERAL PROVISIONS.

§ 555. Any two or more corporations organized under this chapter, or the laws of this or any other State, may consolidate into a single corporation; the directors or a majority of them, of such corporations as desire to consolidate may enter into an agreement signed by them, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect, and stating such other facts as are necessary to be set out in articles of incorporation as herein provided, except the facts required by subdivision five, section two, hereof, as well as the manner of converting shares of the old corporation into the new, with such other details and provisions as are deemed necessary. Provided, that such consolidated corporations shall become and be a domestic corporation of this Commonwealth for all purposes, and shall be subject to the jurisdiction of the courts of this State and to all laws of this State regulating corporations organized thereunder, and their law shall not be construed as altering or repealing any law regulating the taxation of bridges over streams forming the boundary line of this State.

Written notice of the intention to consolidate shall be mailed to the address of each stockholder of each corporation at least twenty days previous to entering into such agreement, and such notice shall be published at least two weeks in some newspaper printed and circulated in the county of its principal place of business, and the written consent of the owners of at least two-thirds of the capital stock of each corporation shall be necessary to the validity of such agreement.

§ 556. When the agreement is signed, acknowledged and recorded in the same manner as articles of incorporation are required to be, the separate existence of the constituent corporations shall cease and the consolidated corporations shall become a single corporation in accordance with the said agreement and subject to all the provisions of this chapter and other laws relating to it, and shall be vested with all the rights, privileges, franchises, exemptions, property, business, credits, assets and effects of the constituent corporations without deed or transfer and shall be bound for all their contracts and liabilities; Provided, that no consolidated company formed under this chapter, or the laws of this State, shall be required to pay any organization tax, except that, if in the consolidation the capital stock of the consolidated company be increased, or be thereafter increased to an amount exceeding the aggregate capital stock of the constituent companies at the time of the consolidation, then in that event the consolidated company shall not have or exercise any corporate powers until it shall have paid into the State treasury one-tenth of one per centum upon the amount of said increase, and upon such payment shall have filed a statement thereof with the Secretary of State; if, however, any corporation, hereafter formed in another State where no organization tax was required to be paid by it, shall be consolidated with one formed in this State, then the organization tax required by the laws of this State shall be paid upon so much of the capital stock of the consolidated corporation as shall be equal to the capital stock of the foreign constituent corporation; or if such foreign corporation hereafter formed may have been required by the laws of its State to pay an organization tax less than that then required to be paid in this State. then upon such consolidation with a corporation of this State, an organization tax shall be paid equal to the difference between that required of such foreign corporation in the State of its creation and that which would have been required had it been formed in this State.

ARTICLE V. RAILROADS.

SUBDIVISION I. Railroad companies, organization of.
SUBDIVISION II. General provision concerning.
SUBDIVISION III. Railroad Commission.
SUBDIVISION IV. Condemnation of land by.

SUBDIVISION I. RAILROAD COMPANIES, ORGANIZATION OF.

§ 763. Any number of persons, not less than seven, may associate to form a corporation for the purpose of constructing, operating and maintaining a railroad. Such persons shall execute articles of incorporation, which shall specify the name of the proposed railroad. and number of years the corporation is to continue, the amount of its capital stock, and the number of shares into which the same shall be divided; the number of directors, which shall be not less than five nor more than fifteen, and their names; the places from and to which, and the name of each county into or through which it is intended to be constructed, and its length as near as may be. Each subscriber to such articles shall set opposite his name his place or residence and the number of shares subscribed by him. Whenever two hundred and fifty dollars per mile has, in good faith, been subscribed, and twenty per cent. thereof paid in cash, to the persons named in the articles as directors, and an affidavit made to that effect by two of said named directors and attached thereto, a copy of said articles and affidavit shall be filed in the office of the railroad commissioners and in the office of the Secretary of State, and when a certificate of such fact is delivered by the said officers to the incorporators, the persons who have subscribed such articles shall be a body corporate by the name specified in the articles, and as such may sue and be sued, contract and be contracted with, have a seal, and change the same at pleasure; may elect or appoint directors, who shall choose from their number such officers as may be necessary; may require from any officer or employe a bond for the faithful discharge of his duties, and prescribe such by-laws for its government, and exercise such powers as are necessary to the conduct of its business not inconsistent with law.

§ 764. The articles of incorporation may be amended and changed in the manner provided in article one of this chapter; and a copy of any amendment or alteration attested by the president and secretary of the corporation, shall be filed in the office of the railroad commissioners and the Secretary of State within thirty days after its adoption by the corporation; and when so filed and a certificate of that fact is delivered to the president or secretary, the corporation shall have the right to make such alterations and changes in its business as are authorized by the amended articles.

§ 765. No railroad corporation organized or created by or under the laws of any other State, shall have the right to condemn land for, or acquire the right of way for, or purchase or hold land for its depots, tracks or other purposes, until it shall have first filed in the office of the Secretary of State of this State, in the manner provided in the first article of this chapter, its acceptance of the Constitution of this State, and shall have become organized as a corporation under the laws of this State, which it may do by filing in the office of the Secretary of State and the railroad commission, articles of incorporation in the manner and form provided in section 182 of this article.

§ 766. A copy of any articles of incorporation, or any amendments thereto, filed in the offices mentioned, and certified by the Secretary of State, shall be admitted as evidence for or against the corporation, and shall be *prima facie* evidence of the matters therein stated.

§ 767. Every corporation proceeding to construct its road in or through any county shall file and have recorded at its expense in the county clerk's office of such county, a map of the route, showing the center of said proposed road, and width thereof; and if, after a road is located, it is desired to change its location, or the proposed route is changed, as it may be, a map showing such change as well as the center and width thereof, shall be filed and recorded at its expense in the county clerk's office of the county in which the change is made. If the proposed route, as indicated by the map, crosses the line of any other railroad, notice of such fact shall, before the construction of the road is commenced near the point of crossing, be given to the railroad commission, who shall give notice to the corporation whose road it is proposed to cross, as well as the other corporation, of the time and place it will meet to consider the question of approving the crossing, if objection be made thereto;

and the commission may determine the manner in which the crossing shall be made to protect against accidents thereat.

§ 768. Every company shall possess the following powers, and be subject to the following liabilities and restrictions:

First. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for such road; and, for such purposes, by its officers, agents and servants, to enter upon lands or waters of any person, but subject to liability for all damages which they shall do thereto.

Second. To receive, hold, enter upon, and take possession of such voluntary grants and donations of real and other property as shall be made to it, to aid in the construction and maintenance and operation of such road; but the real property thus received shall be held and used for the purposes of such grant or donation only.

Third. To purchase, hold, enter upon, take possession of and use all such real estate, franchise and other property as may be necessary for the construction, maintenance and accommodation of its line of road; but the same shall not be taken or appropriated without the consent of the owner until the compensation to be made therefor is agreed upon or ascertained, and paid or deposited as provided by law.

Fourth. To lay out its road not exceeding one hundred feet in width, and if more than one track is laid, fifty feet additional for each track, and construct the same; and for the purpose of cuttings, or embankments, and procuring stone, gravel or other material, or for the purpose of draining its road-bed, to take, in the manner herein provided, such other lands in the vicinity of or adjacent to its road as may be necessary for the proper construction, operation and security of its road and to change, when it deems proper, the gauge of its road; and may, for the purpose of avoiding annoyance to public travel or dangerous or difficult grades or curves, or unsafe or insecure grounds or foundations, or for other reasonable cause, change the location or grade of any portion of its road; but shall not, except as otherwise provided, depart from the general route prescribed in the articles of incorporation.

Fifth. To construct its road upon or cross any water course, private or plank road, highway, street, lane or alley, and across any railroad or canal; but the corporation shall restore the water course, private or plank road, highway, street, lane, alley, railroad,

or canal to its former condition, as near as may be, and shall not obstruct the navigation of any stream, or obstruct any public highway or street, by cars of trains, for more than five minutes at any one time; and shall construct suitable road and street crossings for the passage of teams by putting down planks or other suitable material between and on each side of the rails, the top of which shall be at least as high as the top of the rails of such road or street; and in case the road is constructed upon any public street or alley, the same shall be upon such terms and conditions as shall be agreed upon between the corporation and the authorities of any city in which the same may be; but such road shall not be constructed upon any public street or alley until compensation shall be made by the corporation therefor to the owner of the property adjoining such street or alley, and opposite where such road is to be constructed, either by agreement or in the manner provided by law.

§ 769. Any company may build such spurs, switches, tracks or branches as may be necessary to conduct its business or develop business along its line of road, and for that purpose shall have all the powers and be subject to the same restrictions and liabilities as are conferred upon it for the construction of its main line; and may purchase the property and franchises of any other railroad company, at public or private sale, not a competing or parallel line; and may sell its franchises and property to any other company not a competing or parallel line or otherwise prohibited by law to purchase, and may, unless prohibited by law, subscribe to the capital stock of any other railroad company organized under the law of this or any other State, with the assent of such company, and any company organized under the laws of this, or any other State, may, unless prohibited by law, subscribe to the capital stock of any company organized under this law, with the assent of such company, and may make any agreement or arrangement, not inconsistent with law, with any other railroad company.

§ 770. Any two or more railroad companies organized under this chapter or the laws of this or any other State may, unless otherwise provided by law, consolidate into a single company in the manner provided by article one, of this chapter as amended and such new corporation shall possess all the powers, exemptions, rights and franchises conferred upon such two or more corporations, and be vested with all the property and assets of the constituent corporations, and shall be subject to all the restrictions

and liabilities, and perform all the duties imposed by the provisions of their respective charters or laws of organization not inconsistent with this law.

§ 771. Corporations organized under this law shall have power to borrow such sums of money as may be necessary for funding their floating debt, or for completing, equipping or operating their road, or any part thereof, or for paying any debts incurred for such purposes, and to issue and dispose of their bonds or obligations for any amount necessarily borrowed for such purpose, and to mortgage their corporate property and franchises, or any part thereof, to secure the payment of any debt contracted, or to defray any expenditure for the purposes aforesaid; and may confer on any holder of such bonds or obligations the right to convert the same into the stock of such company; and may, in the manner provided in article one of this chapter, increase or decrease its capital stock; and the increased stock may be "common" or "preferred," as shall be designated in the call for the meeting of the stockholders. If preferred stock is issued, the company may guarantee to the holders thereof semi-annual or quarterly dividends, to an amount not exceeding six per cent. per annum, payable at its office or at such other places as the directors may designate. The stock may be sold at such time and place, either within or without the State, as may be deemed advisable, and the proceeds thereof applied for the purposes for which it was issued; the unpreferred stock of the company shall be entitled to dividends only out of the surplus of the profits, after setting apart a sum sufficient to pay the dividends upon the preferred stock; and the company which issues such preferred stock shall reserve the privilege of redeeming and cancelling the same at par at any time after three years from the date of its issue; and the preferred stock herein provided for may be convertible into bonds of the company at the option of the parties.

§ 771A 1. Whenever any company owning or operating a railroad in Kentucky, or any company owning or operating a bridge over a navigable stream constituting a boundary of the State of Kentucky, shall be insolvent and shall come into the hands of any court under proceedings to enforce any mortgage or deed of trust, or for the payment of debts, it shall be lawful for the holders of a majority of any class of securities issued by such company, or any class of creditors of such company, to prepare and submit to such court a plan for the reorganization of the company.

Such plan shall provide: First. For the payment of all taxes and assessments due and owing by such company. Second. For the payment of all debts for labor and material and supplies due by said company, and for which a lien shall exist on the property thereof under the law of the State of Kentucky. Third. For the payment of any debt due, or the assumption of any debt not due, and for which there shall exist a lien prior and superior to the claim of the class of creditors or security-holders proposing such plan. Fourth. For the issue of new classes of securities, which shall be for distribution among the creditors or the holders of the class of securities proposing such plan, and of subordinate and inferior securities or debts, and providing for such distribution. Such plan shall, as far as practicable, regard the relative rights and priorities of the different classes of creditors or security-holders.

2. When any such plan as above provided shall be filed with the court, it shall be the duty of the court to give such notice, by publication or otherwise, as it the [may] order, that a plan of reorganization has been filed in the cause, and that any holder or holders of any securities, or any creditor of such company, shall be entitled to file objections thereto, and shall be entitled to be heard in person or by attorney on the subject thereof; and if, upon the hearing thereof, and upon consideration of such plan the court shall approve the same, or shall approve the same with such alterations and amendments as the court shall adopt, and such plan or scheme so approved shall receive the assent of the holders of three-fourths of the class of securities proposing the same, and a like proportion of all other classes of creditors subordinate thereto, and the court shall be of opinion that the said plan and scheme of reorganization is fair and equitable, and has made reasonable provision for the holders of all securities of said companies, the court shall adjudge and order that said plan or scheme of reorganization shall be adopted and carried out, and shall make proper provision for the execution thereof.

3. All creditors and persons holding securities of the said company, and not objecting to such plan of reorganization, shall be deemed to have assented thereto, and upon the entry of such order of approval, the court may require from any creditor or person holding any of the securities of said company embraced by the said plan to surrender for discharge or cancellation such outstanding claims or securities, and receive in lieu or on account thereof the new securities provided in such plan. But where claims

have arisen or securities have been issued prior to the passage of this act, and any holder of such claims or securities shall object to the plan of reorganization, there shall be inserted in such plan a provision for preserving and maintaining the right of such holder so as not to impair the obligation of his contract.

4. If no such plan be proposed or approved, the court may, within such time as the court may deem proper, order a sale of the property of any such company being so administered, after such notice as shall seem to the court sufficient. At any such sale, or at any sale which shall be hereafter made, of any railroad or bridge under any decree of sale, the purchaser or purchasers shall be required to pay the amount of the bid in cash: Provided, however, That if the property shall be purchased by or in behalf of holders of any class of securities issued by the said company, the purchaser or purchasers shall be required to pay in money or securities, immediately, such amount only as the court may deem sufficient to provide against a non-compliance with the bid; and the purchaser or purchasers shall thereafter be entitled, within such time as may be fixed by the court, to pay the amount of the bid by the payment of such money as may be necessary, and by the surrender of securities in proportion as such securities shall be entitled to receive the purchase money; and all holders of the same class of securities shall be entitled to have and enjoy equal rights in any such purchases with other holders of the same class. Such purchaser or purchasers under this latter provision shall, before adopting any article of incorporation, or transferring the property to any corporation formed for the purpose, present and file with the court, in which the decree of sale was entered, a plan of reorganization with substantially the provisions required in the preceding sections, and which shall likewise be subject to the approval of the court; and when the same shall have been so approved, and an order to that effect, and providing for the execution thereof, shall have been entered, the said purchaser or purchasers may adopt articles of incorporation under and in accordance with the laws of the State of Kentucky providing for the incorporation of such companies.

5. The word "securities," as used in this act, shall embrace bonds, debentures, preferred and common stock, and other issues of obligations and certificates of substantially similar character, and the provisions hereof shall apply, as far as may be, to proceedings in relation to any separate division, or portion, or branch

of any railroad on which are charged any separate issues of securities.

6. Where the property of any such company shall be partly within and partly without this State, the plan of reorganization may make provisions for including the property without the State in such plan, in such manner, as may be consistent with the laws of the State where situated.

Section 772A. 1. That all corporations, companies, persons or associations owning and operating a railroad line in this Commonwealth or any branch of any railroad in this Commonwealth, the length of which exceeds five miles, shall be required and they are hereby directed, to run at least one passenger train each way on every day of the year, Sundays excepted, over said line: Provided, however, That the operation of a train known as a mixed train on lines carrying passengers and freight for hire, on which both passengers and freight are carried, if operated in accordance with the provisions of this act, shall be deemed a compliance therewith. Provided, further, That the provisions of this act shall not apply to mere coal switches or any switch or branch, which is chartered and used by any corporation, company or person merely for the purpose of carrying freight or coals to their main line or track.

2. That any corporation, association, company or person who shall wilfully violate the provisions of this act shall be liable to a forfeiture of the charter of such corporation, company or association, and upon conviction in a court of competent jurisdiction shall be fined not less than three hundred dollars for each offense. And the failure of such corporation, company, association or person to run a train either way on any day during the year, Sundays excepted, shall be considered and treated as separate and distinct offense.

3. The penalties herein announced may be recovered by indictment in the circuit court of any county through which the tracks of such railroad extends, or by information lodged by the county or Commonwealth's attorney or by any ordinary suit for penalties.

4. That it shall be the duty of the judge of the circuit court of each county through which the line of railroad extends to give in charge to the grand jury, the provisions of this act, at each session of the circuit court held in any county through which the line of such road extends.

SUBDIVISION II. GENERAL PROVISIONS.

§ 772. Any company that has established and maintained throughout the year, for five consecutive years, a passenger station at a point on its road, shall not abandon such station, without the written consent of the railroad commission; and if any station used by the company is burned, or otherwise destroyed, or becomes unfit for the accommodation of the public, the railroad commission shall notify, in writing, the manager or chief officer in this State of the company owning or using such station to rebuild or repair the same, as the case may be, and such company shall, within ninety days after such notice, comply with the requirements thereof, and that every company operating a railroad in this State shall provide a convenient and suitable waiting room and water-closet at all depots in cities and towns and such other stations as the railroad commission may require on its lines, and keep and maintain the same in decent order and repair.

§ 773. Every company shall cause signal boards, well supported by posts or otherwise, at such heights as to be easily seen by travelers, and not obstructing travel, containing on each side, in capital letters at least five inches high, the following inscription: "Railroad Crossing," to be placed and constantly maintained, at each public highway where it is crossed by the railroad at the same level; but such board need not be put up in cities or towns, unless required by the local authorities thereof.

§ 774. That whenever in the opinion of the railroad commission, the public interest require that a gate be erected or maintained, or a flagman be stationed at any street or highway crossing, they shall give the superintendent or manager of the railroad written notice that the same is required, and the company shall, within the time prescribed by the commission, erect and maintain at such crossing the character of gate directed by the commission, and keep a man in charge of the same during such hours as they may designate, or keep a flagman at such crossing during such hours as they may require.

§ 775. That whenever railroads cross each other in the State, the trains shall be brought to a full stop at least fifty feet before getting to the crossing: provided, however, that the provision of this act shall not be applicable where the crossings of such roads

are regulated by derailing switches, or other safety appliances, which prevent collisions at crossings, nor where a flagman or watchman is stationed at such crossings and signal that the trains may cross in safety.

§ 776. No bridge or passway hereafter constructed over any railroad except in cities having power under their charters to regulate the heights of such bridges or passways, shall be at a height less than twenty-two feet above the tracks of the road, unless by the written authority of the commission; and whenever there shall be over any railroad a bridge, tunnel or other obstruction, at a height of less than seven feet above the roof of the freight cars used or hauled on said road, it shall be the duty of the officers of such road to erect and keep in repair, at or near such bridge, tunnel or obstruction, and on each side thereof, a rod or beam placed across the track, at such height and at such distance from the bridge, tunnel or obstruction, as the railroad commission shall direct; and from such rod or beam shall be suspended straps, ropes or cords, of such length as the commission may determine, and not greater than six inches apart, for the space of eight feet, directly over the track.

§ 777. Notice of every accident which may occur and be attended with loss of life shall be given within five days thereafter by the company operating the road on which the accident occurred to the railroad commission, and such company shall furnish the commission all information required by it concerning the cause of the accident.

§ 778. No regular or other passenger train shall be run without an air-brake, or some equally effective appliance for controlling the speed of trains, which may be applied by the engineer to each car composing the train, and which shall, at all times, be kept in good condition and ready for use at the direction of the engineer. The provisions of this section shall not apply to mixed trains.

§ 779. Every company shall require a uniform cap or hat, and distinguishing badges to be worn by all its employes except engineers and firemen, whose duties relate immediately to the transportation of passengers.

§ 780. Before the first day of January, 1894, every company shall adjust, fix or block the frogs on its tracks to prevent the feet of its employes from being cought therein.

§ 781. All railroad companies doing business in this State, upon

lines owned or leased by them, shall, within thirty days after this act goes into effect, furnish to the railroad commissioners copies of all their rates and tariffs then in force; and shall also furnish the commission with copies of all rates and tariffs, or changes therein, thereafter made, at the date that the same are issued.

§ 782. All companies shall place in, on or around the tops of the chimneys of engines a screen, fender, damper, or other appliance that will prevent, as far as possible, sparks of fire from escaping from such chimneys.

§ 783. Every company shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto, offer, or be offered, for transportation, at places established by the corporation for receiving and discharging passengers and freight, and shall, when requested, check every parcel of baggage taken for transportation, if there is a handle, loop, or fixture, so that the same can be attached, and shall give to the person delivering such baggage a check for the same.

§ 784. All companies shall keep their ticket offices open for the sale of tickets at least thirty minutes immediately preceding the departure of all passenger trains from every regular passenger depot from which such trains start, or at which they stop; and when any regular passenger train is delayed for thirty minutes in its arrival at a station which is a telegraph office, it shall cause to have posted, in some conspicuous place in the waiting room for passengers at such station, the fact of and length of time of the delay as soon as the same is ascertained by its agent at such station, and shall keep the waiting room open for passengers until the train arrives; and shall cause to be announced twice within each passenger car of every passenger train, within a reasonable time before its arrival at a station at which, from notice given, it is to stop, the name of such station, and at junctions, crossings and points where trains leave at or near the same time in different directions, shall cause to be announced in each passenger car the direction in which such car is to go.

§ 785. Every company that shall have unclaimed freight not perishable, or unclaimed baggage in its possession, for one year or more, may sell the same at public auction, and out of the proceeds thereof retain the expenses of transportation, storage, advertisement and sale. Notice of such sale shall be given to the consignor and consignee by letter addressed to each of them, re-

spectively, and mailed to the nearest postoffice to the place at which the goods were received, and to which they were carried; and notice of such sale shall also be published for four weeks in some newspaper of general circulation in the State. In case the freight is perishable, it may be sold as soon as it is deemed necessary and proper, and notice of such sale be given, if practicable, to the consignor and consignee, as herein directed. A record shall be kept of the articles sold and prices obtained therefor, and the surplus, if any, after payment of charges, shall be paid to the owner of such articles, if demanded, at any time within two years from date of sale.

§ 786. Every company shall provide each locomotive engine passing upon its road with a bell of ordinary size and steam whistle, and such bell shall be rung, or whistle sounded outside of incorporated cities and towns at a distance of at least fifty rods from the place where the road crosses upon the same level any highway or crossing at which a sign board is required to be maintained and such bell shall be rung or whistle sounded continuously or alternately until the engine has reached such highway crossing and shall give such signals in cities and towns as the legislative authorities thereof may require.

§ 787. No passenger car on any railroad shall be lighted by naphtha or illuminating oil or fluid made in part of naphtha, or any oil or fluid which will ignite at a temperature of less than three hundred degrees Fahrenheit.

§ 790. Every company shall keep its right of way clear and free from weeds, high grass, and decayed timber, which, from their nature and condition, are combustible material, liable to take and communicate fire from passing trains to abutting or adjacent property.

§ 791. Every person now operating, or that may hereafter operate a railroad in this State, under a contract or lease, shall have the same recorded in the office of the Secretary of State and in the county clerk's office of every county in which said road, or part thereof, lies, within thirty days after the contract or lease is executed, or if heretofore made, within thirty days after this law goes into effect.

§ 792. When two railroad companies use the same line of roadway in the operation of their trains, they shall afford along such roadway reasonable and proper facilities for the receiving, forwarding and delivering of passengers and property without discrimina-

tion in their rates and charges. All contracts made between such companies in so far as the same shall conflict with the provisions of this section are hereby declared to be null and void, and contrary to public policy. The railroad commissioners shall enforce the provisions of this section by imposing the same penalties for violations thereof as is provded in section 227 of this act for violations of said section.

§ 793. Any company failing to comply with or violating or permitting any of its employes or agents to violate any of the provisions of sections 772, 773, 774, 775, 777, 778, 780, 781, 782, 786, 787 and 791 of this article, shall, in addition to subjecting itself to any damages that may be caused by such failure or violation, be guilty of a misdemeanor, and be fined for each failure or violation not less than one hundred nor more than five hundred dollars, to be recovered by indictment in the circuit court of any county through which the company n default operates a line of road, or in the Franklin Circuit Court.

§ 794. Any person who shall recklessly, wantonly or maliciously throw any stone, stick or club or other missile, at or into, or shoot at or into any engine of any railroad train in this State, or any car attached thereto, on or in which engine or car there may be any passenger or other person, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in the county jail not less than six nor more than twelve months. And if any such stone, stick, club or other missile so thrown was calculated to produce death or great bodily harm, and any person or passenger, on or in such engine or car attached thereto, shall be injured or wounded, such person throwing the same shall be deemed guilty of a felony, and be fined in a sum not less than two hundred nor more than five hundred dollars, and imprisoned in the penitentiary not less than one nor more than two years. And should death ensue from such throwing or shooting within one year thereafter, the person guilty of the same, as herein provided, shall be deemed guilty of murder.

§ 805. It shall be unlawful for any person other than passengers and employes, to get on or off on the outside, or to swing on or hang on from the outside of an engine or car whilst the same is in motion or switching, or immediately preceding its moving or switching. Any person violating the provisions of this section shall be fined not exceeding ten dollars for each offense.

§ 806. If any person whilst riding on a passenger or other train, shall, in the hearing or presence of other passengers, and to their annoyance, use or utter obscence or profane language, or behave in a boisterous or riotous manner, or obtain, or attempt to obtain, money or property from any passenger by any game or device, he shall be fined for each offense not less than twenty-five nor more than one hundred dollars or imprisoned in the county jail not less than ten nor more than fifty days, or both so fined and imprisoned; and it shall be the duty of the conductor in charge of any train upon which there is a person who has violated the provisions of this section, either to put such person off the train, or to give notice of such violation to some peace officer at the first stopping place where any such officer may be.

§ 807. Any person who shall willfully and maliciously tear up, displace, break, or disturb, any rail or other fixture attached to the track or switch of any railroad in operation, or break any bridge or viaduct of such road, or who shall place any obstruction on the track or switch of such road, or do any act whereby an engine or car might be upset, arrested or thrown from the track of such road or switch, or any branch or turn-out, shall be confined in the penitentiary not less than one nor more than five years.

§ 808. Any person who shall, by any of the acts mentioned in the next preceding section, cause the life of any person to be put in immediate peril, or cause any locomotive or car to be actually thrown from the track, shall be confined in the penitentiary not less than two nor more than ten years.

§ 809. If, by the locomotives or cars of any company, cattle shall be killed or injured on the track of said road adjoining the lands belonging to, or in the occupation of the owner of such cattle, who has not received compensation for fencing said land along said road, the loss shall be divided between the railroad company and the owner of such cattle; but in every case where cattle are killed or injured by the negligence or carelessness of the agents or servants of any company, it shall pay full damages for such killing or injury; and the killing or injury of cattle by the engine or cars of any company shall be *prima facie* evidence of negligence and carelessness on the part of the company, its agents and servants.

§ 810. Whenever any cattle may be killed or injured by the cars or locomotive upon any railroad, it shall be lawful for the owner of the cattle so killed or injured, after first giving the nearest station agent of the company operating said railroad written no-

tice of his intention, to apply to a justice of the peace within the district in which said cattle may have been killed or injured; and said justice shall appoint three discreet and disinterested housekeepers of his county a board of appraisers, who after being duly sworn, shall examine the cattle so killed or injured, and affix a value upon the same if killed, or assess the damages to the same if injured, and return to said justice a written report carefully describing the cattle, stating whether they were killed or injured, and also setting out the valuation or assessments of damages made by them; which report said justice shall preserve as a part of the records of his office.

§ 811. If the company shall fail, for sixty days, to pay to the owner of the cattle so killed or injured the full amount assessed by said board of appraisers, and one-half the costs attending the assessment, he shall have the right to institute suit on the original cause of action, and if upon the trial, he recovers a verdict for an amount equal to the amount assured in his favor by said board of appraisers, it shall be the duty of the court to render judgment in his favor for the amount of said verdict, and twenty-five per centum in addition thereto; but the company has offered to pay the award and the owner has refused to accept the same, and he fails to recover a verdict for an amount equal to said assessment, the cost of the action shall be taxed against him.

§ 812. The justice of the peace and the three appraisers shall receive for their services, each the sum of one dollar, to be paid equally by the company and the owner of the stock killed or injured; and if an action is brought against the company, these fees shall be taxed as cost against the unsuccessful party.

§ 813. The provisions of the last three preceding sections shall not apply to any railroad company which shall inclose its entire line of road with a good and lawful fence, and good and sufficient cattle-gaps, and keep the same in repair.

§ 814. The rolling stock and other movable property belonging to any company in this State shall be considered personal property, and liable to execution and sale in the same manner as the property of individuals; and the earnings, money, and choses in action of any company in the hands of any officer, agent or employe may be subjected to the payment of debts in the same manner as similar property of individuals; and after an execution on a judgment against any company owning or operating any

railroad in this State shall be returned by the proper officer no property found, in whole or in part, the plaintiff therein may institute an equitable action against said company in the circuit court of the county in which said judgment was rendered, to place its road and property in the hands of a receiver; and the court, upon a petition showing said return, and the failure to pay said judgment upon the services of summons upon said company shall appoint some suitable person as receiver of said company, and, as such take possession and control of all the road and property belonging to and operated by said company, including all rolling stock thereof. Said receiver shall operate said road until he shall have collected a sum sufficient to pay off the judgment and costs, and the cost of the receivership, when he shall surrender the road and property to the defendant. The receiver shall first pay out of the earnings and receipts of the road collected by him the necessary operating expenses, including in same what shall be necessary to keep said road in such repair that it can be safely and properly operated. The said receiver, before entering upon his duties, shall execute a bond for the faithful performance of his duties, with good and sufficient sureties, to be approved by the court.

§ 815. Any person engaged in operating a mine or stone quarry within three miles of any navigable stream or railroad, may, for the purpose of transporting material to and from such stream or railroad and such mine or quarry construct and operate a line of railroad for such mine or quarry to the most convenient and accessible point on such stream or road, and may, under the general laws, condemn such land as may be necessary, not exceeding fifty feet in width for each track necessarily constructed, and not exceeding two acres of land at such railroad or stream for the purpose of necessary buildings. The owner or operator of such road shall be, so far as they are applicable, governed and controlled by the laws relating to other railroads, and shall have the same rights and privileges granted to corporations owning and operating lines of railroad.

§ 816. If any railroad corporation shall charge, collect or receive more than a just and reasonable rate of toll or compensation for the transportation of passengers or freight in this State, or for the use of any railroad car upon its tracks, or upon any track, it has control of, or the right to use in this State, it shall be guilty of extortion. (35 S. W. Rep., 129.)

§ 817. If any corporation engaged in operating a railroad in

this State shall, directly or indirectly, by any special rate, rebate drawback or other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered in the transportation of passengers or property than it charges, demands, collects or receives from any other person for doing for him a like and contemporaneous service in the transportation of a like kind of traffic, it shall be deemed guilty of unjust discrimination. (46 S. W. Rep., 702.)

§ 818. It shall be unlawful for any corporation to make or give any undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic, in any respect, whatever, in the transportation of a like kind of traffic; or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage. When one or more car loads of freight shall be transported at the same time for different persons, and for each shipper a car load or more, such shipment shall be considered and taken as the same quantity of freight within the meaning of this law; and when less than a car load of freight, and over five thousand pounds, are transported at the same time for different shippers, and for each shipper over five thousand pounds, such shipment shall be considered and taken as the same quantity of freight; and when over five hundred pounds and less than five thousand pounds are transported at the same time for different shippers, and for each shipper said quantity of freight, such shipment shall be considered and taken as the same quantity of freight. (46 S. W. Rep., 700.)

§ 819. Any railroad corporation that shall be guilty of extortion or unjust discrimination, or of giving to any person or locality or to any description of traffic, an undue or unreasonable preference or advantage, shall, upon conviction, be fined for the first offense in any sum not less than five hundred dollars nor more than one thousand dollars; and upon a second conviction, in any sum not less than five hundred dollars nor more than two thousand dollars; and upon a third conviction, in any sum not less than two thousand dollars nor more than five thousand dollars. The circuit court of any county, into or through which the line of railroad may run, owned or operated by the corporation alleged to be guilty as aforesaid, and the Franklin Circuit Court, shall have the jurisdiction of the offense, which shall be prosecuted by indictment, or by action in the name of the Commonwealth, upon information filed

by the Board of Railroad Commissioners; and such railroad corporation shall also be liable in damages to the party aggrieved to the amount of damages sustained, together with cost of suit and reasonable attorney's fees to be fixed by the court. Indictments under htis section shall be made only upon the recommendation or request of the Railroad Commission filed in the court having jurisdiction of the offense; and all prosecutions and actions under this law shall be commenced within two years after the offense shall have been committed, or the cause of action shall have accrued.

§ 820. If any person owning or operating a railroad in this State, or any common carrier shall charge or receive any greater compensation in the aggregate for the transportation of passengers or property of like kind, under substantially similar circumstances and conditions, for a shorter than for a longer distance, over the same line, in the same direction, the shorter being included within the longer distance, such person shall, for each offense, be guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars, to be recovered by indictment in the Franklin Circuit Court, or the circuit court of any county into or through which the railroad or common carrier so violating runs or carries on its business. Upon complaint made to the Railroad Commission that any railroad or common carrier has violated the provisions of this section, it shall be the duty of the commission to investigate the grounds of complaint, and if, after such investigation, the commission deems it proper to exonerate the railroad or common carrier from the operation of the provisions of this section, an order in writing to that effect shall be made by the Commission, and a copy thereof delivered to the complainant and the railroad or common carrier, and the same shall be published as a part of the report of the Commission; and after such order the railroad or carrier shall not be prosecuted or fined on account of the complaint made. If the Commission, after investigation, fails to exonerate the railroad or carrier from the operation of the provisons of this section, an order in writing to that effect shall be made by the Commission and a copy thereof delivered to the complainant, and the railroad or common carrier, and the same shall be published as a part of the report of the Commission; and after such order it shall be the duty of the Commission to furnish a statement of the facts, together with a copy of its order, to the grand jury of any county, the circuit court of which has jurisdiction, in order that the railroad company or carrier may be indicted

for the offence; and the Commission shall use proper efforts to see that such company or carrier is indicted or prosecuted. (51 S. W. Rep., 164, 1012.)

SUBDIVISION III. RAILROAD COMMISSION.

§ 821. There is established a department in the State Government to be known as the Railroad Commission, which shall be composed of three commissioners, one of whom shall act as chairman, and whose duty it shall be to see that the laws relating to all railroads, except street, are faithfully executed, and to exercise a general supervision over the railroads of the State. Each of said commissioners is authorized to administer oaths, and two of them shall constitute a quorum.

§ 822. The office of the Commission shall be at the seat of government, and they shall be provided with suitable offices, furniture and stationery by the State, and may appoint a secretary at a salary of twelve hundred dollars per year, which shall be paid by the State; each commissioner shall, before entering upon the duties of his office, take an oath to discharge faithfully the duties of his office; and they shall each receive an annual salary of two thousand dollars and their actual necessary traveling expenses while engaged in the discharge of their duties, which, together with the salary of the secretary, shall be paid in the same manner as the salary of the Governor, except that before any expenses are paid, the chairman of the Commission shall file with the auditor an itemized statement of said expenses, signed by him and approved by the Governor, which statement shall be filed before any warrant can be issued therefor.

§ 823. At the regular election in 1895, and every four years thereafter, there shall be elected one commissioner from each of the districts hereafter designated, by the qualified voters thereof, who shall take his office on the fifth Tuesday next succeeding his election and hold the same for four years, and until his successor is elected and qualified.

§ 824. For the purpose of electing commissioners the State is divided into three districts, the first composed of the counties of Meade, Hardin, Larue, Hart, Metcalfe, Barren, Monroe, Allen, Simpson, Warren, Edmonson, Grayson, Breckinridge, Hancock, Ohio, Butler, Logan, Todd, Muhlenberg, McLean, Daviess, Hen-

derson, Webster, Hopkins, Christian, Trigg, Caldwell, Lyons, Crittenden, Union, Livingston, Marshall, Calloway, Graves, McCracken, Ballard, Hickman, Fulton and Carlisle. The second composed of the counties of Gallatin, Owen, Scott, Fayette, Jessamine, Pulaski, Wayne, Clinton, Russell, Casey, Lincoln, Garrard, Boyle, Mercer, Anderson, Woodford, Franklin, Henry, Oldham, Carroll, Trimble, Jefferson, Shelby, Spencer, Bullitt, Nelson, Washington, Marion, Taylor, Green, Adair and Cumberland. The third composed of the counties of Boone, Kenton, Grant, Harrison, Bourbon, Clark, Estill, Madison, Jackson, Laurel, Rockcastle, Whitley, Knox, Bell, Harlan, Leslie, Perry, Letcher, Floyd Pike, Martin, Johnson, Clay, Breathitt, Owsley, Lee, Powell, Montgomery, Bath, Nicholas, Fleming, Robertson, Pendleton, Bracken, Campbell, Lewis, Greenup, Mason, Rowan, Carter, Elliott, Boyd, Lawrence, Morgan, Magoffin, Wolfe, Menifee and Knott.

§ 825. Every railroad company shall, on or before the first day of September in each year, make and transmit to the Commission, at its office in Frankfort, under oath of the president or manager of the company, a full and true statement of the affairs of said company as the same existed on the first day of the preceding July, specifying:

1st. The amount of capital stock paid up, and the names of the owner thereof, and amounts owned by each, and the residence of each stockholder as far as known.

2d. The amount of its assets and liabilities.

3d. The names and places of residence of its general officers.

4th. The amount of cash paid to the company on account of the original capital stock.

5th. The amount of funded debt.

6th. The amount of floating debt.

7th. The estimated value of the road-bed, including iron and bridges.

8th. The estimated value of rolling stock.

9th. The estimated value of stations, buildings and fixtures.

10th. The estimated value of other property.

11th. The length of single main track.

12th. The length of double main track.

13th. The length of branches; stating length of single and of double track.

14th. The aggregate length of siding and other tracks not above enumerated.

15th. The number of miles run by passenger trains during the year preceding the making of the report.

16th. The number of miles run by freight trains during the same period.

17th. The number of tons of through freight carried, and the number of tons of local freight during the same period.

18th. The monthly earnings for the transportation of passengers during the same time.

19th. The monthly earnings for the transportation of freight during the same time.

20th. The monthly earnings from all other sources respectively.

21st. The amount of expenses in running passenger trains during the same time.

22d. The expenses incurred in running freight trains, and in running mixed trains during the same time.

23d. All other expenses incurred in the management of the road, including the salaries of the officers, which shall be reported separately.

24th. The amount expended for repairs of the road and maintenance of the way, including repairs and renewals of bridges and renewals of iron.

25th. The amount expended for improvements, and whether the same is estimated as a part of the expenses of operating or repairing the road; and if either, which?

26th. The amount expended for motive power cars.

27th. The amount expended for station houses, buildings and fixtures.

28th. All other expenses for maintenance of way.

29th. All other expenses for other purposes.

30th. The number of tons of freight carried one mile.

31st. The amount received per ton per mile.

32d. The average distance each ton was hauled, and the average cost of hauling a ton of freight one mile.

33d. What freight and transportation companies run on its road, and on what terms, and whether such transportation companies use the cars of the railroad company, or cars furnished by themselves.

34th. Whether the freight or cars of such transportation companies are given any preference in speed or order of transportation; and, if so, in what particular? The Commission may propound any additional interrogatories, which shall be answered by such company n the same manner as those specified in the forego-

ing section; and the Commission shall furnish to each company in proper time, blanks upon which to answer the foregoing and such other questions as may be propounded.

§ 826. Said Commission shall examine all through freight rates from points out of this State to points into this State; and whenever they find that a through rate charged into or our of this State is excessive or unreasonable, or discriminating in its nature, they shall call the attention of the railroad officials in this State to the fact, and to urge them of the propriety of changing such rates. And when such rates are not changed, it shall be the duty of said Commission to present the facts to the Interstate Commerce Commission and appeal to it for relief, and they shall receive upon application the services of the Attorney-General of this State and into the condition, management, and all other matters concerning the business of railroads in this State so far as the same pertain to the relation of such railroads to the public, and whether such railroad corporations, their officers and employes comply with the laws of the State; and whether it shall come to their knowledge, or they shall have reason to believe that the laws affecting railroad corporations in their business relations to the public have been violated, they shall prosecute, or cause to be prosecuted, the corporatons or persons guilty of such violations.

§ 827. They shall have the power to examine, under oath, any person, or the directors, officers, agents and employes of any railroad corporation doing business in this State, concerning the management of its affairs, and to obtain information pursuant to this law; and shall have power to issue subpoenas for the attendance of witnesses, and to administer oaths; and any person who shall neglect or refuse to obey the process of subpoenas issued by said Commission or who being in attendance shall refuse to testify, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment not less than ten nor more than fifty days, or both in the discretion of the jury.

§ 828. Each officer, agent or employe failing or refusing to make, under oath, any report required by the Commission within the time required, or failing or refusing to answer fully, under oath if required, and inquiry propounded by the Commission, or who shall, in any way, hinder or obstruct the Commission in the discharge of its duty, shall be guilty of a misdemeanor, and shall be fined for each

offense not less than five hundred nor more than one thousand dollars; and it shall be the duty of the Commission to prosecute the person offending; and the Franklin Circuit Court, or the circuit court of any county through which the railroad runs, the officers, agents or employes of which has violated the provisions of this section, shall have jurisdiction of such prosecution, and it shall be the duty of the Commonwealth's Attorney to prosecute all indictments, actions and proceedings under this law.

§ 829. The Commission shall hear and determine complaints under sections 223, 224 and 225. Such complaints shall be made in writing, and they shall give the company complained of not less than ten days notice of the time and place of the hearing of the same. They shall hear and reduce to writing all the evidence adduced by the parties, and render such award as may be proper. If the award of the Commission be not satisfied within ten days after the same is rendered, the chairman shall file a copy of said award, and the evidence heard, in the office of the clerk of the circuit court of the county, which, under the Code of Practice, would have jurisdiction of said controversy, and the clerk of said court shall enter the same on the docket for trial, and summons shall be issued as in other cases against the party against whom the award shall have been rendered, requiring said party to appear in the court within the time allowed in ordinary cases, and show cause why said award shall not be satisfied. If such party fails to appear, judgment shall be rendered by default, and the same proceedings had thereon as in other ordinary cases. If a trial is demanded, the case shall be tried in all respects as other ordinary cases in which the same amount is involved, except that no evidence shall be introduced by either party except that heard by the Commission, except such as the court shall be satisfied, by sworn testimony, could not have been produced before the Commission by the exercise of reasonable diligence; the judgment and proceedings thereon shall be the same as in other ordinary cases.

§ 830. Whenever, in the judgment of the Commission, after a personal examination of the same, it shall appear that repairs are necessary upon any railroad, or when from complaint made or their own knowledge they shall have reason to believe that the tracks, bridges, tunnels or other structures of any company are in an unsafe or dangerous condition, or unfit for public travel, or that any addition to, improvements or changes in the stations or terminal facilities are needed for the convenience and security of the public, they shall

give notice in writing to the company owning or operating such road of the repairs, improvements or changes they deem proper and necessary, and shall afford such corporation an opportunity to be heard in reference thereto, and if the company shall neglect or refuse to make such repairs, improvements or changes within a reasonable time after such hearing if a hearing is requested by the company, and the Commission shall believe that such improvements or changes are proper and necessary after a hearing, if one is had, they shall lay the facts before the Attorney-General for his action, and shall report the same fully to the next Legislature; no examination, request, advice or report of the Commission shall, in any way, affect the duties or obligations of any company, or relieve it from any liability.

§ 831. The Commission shall not be required to give publicity to any contracts, leases or engagements obtained by them in their official capacity, if the interest of any company would thereby be injuriously affected, unless, in the judgment of the Commission, the public interest requires it.

§ 832. The commissioners, nor either of them shall, directly or indirectly solicit or request from or recommend to any railroad company, or any officer, attorney, agent, or employe thereof, the appointment of any person to any place or position, nor shall any company offer them, or either of them, any place or appointment for themselves or other persons, nor shall they, or either of them, directly or indirectly, request, accept or receive any present, gift or gratuity of any kind from any company. A violation of the provisions of any of them of this section shall subject the person or corporation so violating to a fine of not less than one thousand nor more than five thousand dollars, to be recovered by indictment as other penalties for violations of law are.

§ 833. For a copy of any record on file in their office they shall charge and receive the same fees that are charged by the Secretary of State for similar services, and shall cover into the State Treasury any amount so received.

§ 834. The Commission shall annually, on the first day of December, make a report to the Governor of all matters relating to their office for the preceding year, and such as will disclose the practical workings of the railroads in this State, and such suggestions in relation thereto, as they may deem necessary and proper, and shall have printed and lay before each Legislature, within the first ten days of its session, five hundred copies of their reports for the preceding two years.

SUBDIVISION IV. CONDEMNATION OF LAND.

§ 835. When any company authorized to construct a railroad shall be unable to contract with the owner of any land or material necessary for its use for the purpose thereof, it shall file, in the office of the clerk of the county court, a particular description of the land and material sought to be condemned, and may apply to the county court to appoint commissioners to assess the damages the owner or owners thereof may be entitled to receive, and thereupon the said court shall appoint three impartial housekeepers of the county who are owners of land, and who shall be sworn to faithfully and impartially discharge their duties under this law.

§ 836. It shall be the duty of said commissioners to view the land and material, and to award to the owner or owners the value of the land or material taken, which shall be stated separately; and they shall also award the damages, if any, resulting to the adjacent lands of the owner, considering the purposes for which it is taken; but shall deduct from such incidental damages the value, if any, of the advantages and benefits that will accrue to such adjacent lands from the construction and prudent operation of the railroad proposed to be constructed. They shall return a report in writing to the office of the clerk of said court, stating their award, and shall describe, in their report, the land and material condemned, give the names of the owners, and whether non-residents of the State, infants of unsound mind, or married women.

§ 837. Upon the application of said company, and upon filing such affidavits as may be necessary, the clerk of said court shall issue process against the owners to show cause why the said report should not be confirmed, and shall make such orders as to non-residents and persons under disability as are required by the Civil Code of Practice in actions against them in the circuit court.

§ 838. At the first regular term of the county court, after the owners shall have been summoned the length of time prescribed by the Civil Code of Practice before an answer is required, it shall be the duty of the court to examine said report, and if it shall appear to be in conformity to this law, and to the extent that no exceptions have been filed thereto by either party, it shall confirm said report as against the owners not excepting.

§ 839. When exceptions shall be filed by either party, the court

shall forthwith cause a jury to be empaneled to try the issues of fact made by the exceptions, and each juror shall be allowed one dollar per day for his services, to be taxes as cost. In assessing the damages the jury shall be governed by the rule prescribed in section 242 of this law; and upon the request of either party, may be sent by the court, in charge of the sheriff, to view the land or material. If sufficient cause be not shown for setting aside the verdict, the court shall render judgment in conformity thereto, and shall make such orders as may be proper for the conveyance of the title upon the payment of damages assessed. Either party may appeal to the circuit court, by executing bond as required in other cases, within thirty days, and the appeal shall be tried *de novo*, upon the confirmation of the report of the commissioners by the county court, or the assessment of damages by said court, as herein provided and the payment to the owners of the amount due, as shown by the report of the commissioners when confirmed, or as shown by the judgment of the county court. When the damages are assessed by said court, and all costs adjudged to the owner, the railroad company shall be entitled to take possession of said land and material, and to use and control the same for the purpose for which it was condemned, as fully as if the title had been conveyed to it. But when an appeal shall be taken from the judgment of the county court by the company, it shall not be entitled to take possession of the land or material condemned until it shall have paid into court the damages assessed and all costs. All money paid into court under the provisions of this law shall be received by the clerk of the court, and held subject to the order of the court, for which he and his sureties on his official bond shall be responsible to the persons entitled thereto.

§ 840. The appeal from the county court shall be taken by filing with the clerk of the court to which the appeal lies a statement of the parties to the appeal, and a transcript of the orders of the county court, and thereupon the said clerk shall certify to the clerk of the county court that said appeal has been filed and the clerk of the county court shall immediately transfer the original papers to the clerk of the court to which the appeal is pending; and if the owner on his appeal shall fail in the circuit court to increase the amount of damages awarded in the county court he shall pay all the costs of the appeal; if the damages are increased in the circuit court, the other party shall pay all the costs of the appeal. The

same rule as to payment of costs shall apply when the appeal is prosecuted by the party seeking to condemn land.

§ 841. No company, association or corporation created by, or organized under the laws or authority of any State or country other than this State, shall possess, control, maintain or operate any railway, or part thereof, in this State until, by incorporation under the laws of this State, the same shall have become a corporation, citizen and resident of this State. Any such company, association or corporation may, for the purpose of possessing, controlling, maintaining or operating a railway or part thereof in this State, become a corporation, citizen and resident of this State by being incorporated in the manner following, namely: By filing in the office of the Secretary of State, and in the office of the Railroad Commission, a copy of the charter or articles of incorporation of such company, association or corporation, authenticated by its seal and by the attestation of its president and secretary, and thereupon and by virtue thereof, such company, association or corporation shall at once become and be a corporation, citizen and resident of this State. The Secretary of State shall issue to such corporation a certificate of such incorporation.

§ 842. Any company, association or corporation that, after the first day of August, one thousand eight hundred and ninety-three, possesses, controls, maintains or operates any railway, or part thereof, in this State, without becoming incorporated as a corporation, citizen and resident of this State, as permitted by section eight hundred and forty-one shall be guilty of a misdemeanor, punishable by a fine of not less than one thousand dollars for each day, or part thereof, that any railway, or part thereof, in this State, is possessed, controlled, maintained or operated by it; any person that in any wise aids or assists, either as officer, agent, servant or employe in so possessing, controlling, maintaining or operating any railway, or part thereof, in this State, shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars for each day or part thereof that he so assists or aids.

TAXATION OF FRANCHISE.

§ 4077. Every railway company or corporation, and every incorporated bank, trust company, guarantee or security company, gas company, water company, ferry company, bridge company, street railway company, express company, electric light company, electric power company, telegraph company, press dispatch company, telephone company, turnpike company, palace-car company, dining-car company sleeping-car company, chair-car company, and every other like company, corporation or association, also every other corporation, company or association having or exercising any special or exclusive privilege or franchise not allowed by law to natural persons, or performing any public service, shall, in addition to the other taxes imposed on it by law, annually pay a tax on its franchise to the State, and a local tax thereon to the county, incorporated city, town and taxing district, where its franchise may be exercised. The Auditor, Treasurer and Secretary of State are hereby constituted a Board of Valuation and Assessment, for fixing the value of said franchise, except as to turnpike companies, which are provided for in section four thousand and ninety-five of this article, the place or places where such local taxes are to be paid by other corporations on their franchise and how apportioned, where more than one jurisdiction is entitled to a share of such tax, shall be determined by the Board of Valuation and Assessment, and for the discharge of such other duties as may be imposed on them by this act. The auditor shall be chairman of said board, and shall convene the same from time to time, as the business of the board may require. (141 U. S., 47; 92 Ky., 38; 9 R., 670; 99 Ky., 623.)

§ 4078. In order to determine the value of the franchises mentioned in the next preceding section, the corporations, companies and associations mentioned in the next preceding section, except banks and trust companies whose statements shall be filed as hereinafter required by section four thousand and ninety-two of this article, shall annually, between the fifteenth day of September and first day of October, make and deliver to the Auditor of Public Accounts of this State a statement, verified by its president, cashier, secre-

tary, treasurer, manager, or other chief officer or agent, in such form as the auditor may prescribe, showing the following facts, viz.: The name and principal place of business of the corporation, company or association; the kind of business engaged in; the amount of capital stock, preferred and common; the number of shares of each; the amount of stock paid up; the par and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months next before the fifteenth day of September of the year in which the statement is required to be made; the amount of surplus fund and undivided profits, and the value of all other assets; the total amount of indebtedness as principal, the amount of gross or net earnings or income, including interest on investments, and incomes from all other sources for twelve months next preceding the fifteenth day of September of the year in which the statement is required; the amount and kind of tangible property in this State, and where situated, assessed, or liable to assessment in this State, and the fair cash value thereof, estimated at the price it would bring at a fair voluntary sale, and such other facts as the auditor may require.

§ 4079. Where the line or lines of any such corporation, company or association extend beyond the limits of the State or county, the statement shall, in addition to the other facts hereinbefore required, show the length of the entire lines operated, owned, leased or controlled in this State, and in each county, incorporated city, town or taxing district, and the entire line operated, controlled, leased or owned elsewhere. If the corporation, company or association be organized under the laws of any other State or government, or organized and incorporated in this State but operating and conducting its business in other States as well as in this State, the statement shall show the following facts, in addition to the facts hereinbefore required. The gross and net income and earnings received in this State and out of this State, on business done in this State, and the entire gross receipts of the corporation, company or association in this State and elsewhere during the twelve months next before the fifteenth day of September, of the year in which the assessment is required to be made. In cases where any of the facts above required are impossible to be answered correctly, or will not afford any valuable information in determining the value of the franchises to be taxed, the said board may excuse the officer from answering such questions: Provided, That said board, from said statement, and from such other evidence, as it may have, if such corporation,

company or association be organized under the laws of this State, shall fix the value of the capital stock of the corporation, company or association, as provided in the next succeeding section, and from the amount thus fixed shall deduct the assessed value of all tangible property assessed in this State, or in the counties where situated. The remainder thus found shall be the value of its corporate franchise subject to taxation as aforesaid.

§ 4080. If the corporation, company or association be organized under the laws of any other State or government, except as provided in the next section, the board shall fix the value of the capital stock as hereinbefore provided, and will determine from the amount of the gross receipts of such corporation, company or association in this State and elsewhere, the proportion which the gross receipts in this State, within twelve months next before the fifteenth day of September of the year in which the assessment was made, bear to the entire gross receipts of the company; the same proportion of the value of the entire property assessed, or liable to assessment, in this State, shall be the correct value of the corporate franchise of such corporation, company or association for taxation in this State.

§ 4081. If the corporation organized under the laws of this State or of some other State or government be a railroad, telegraph, telephone, express, sleeping, dining, palace or chair-car company, the lines of which extend beyond the limits of this State, the said board will fix the value of the capital stock as hereinbefore provided, and that proportion of the value of the capital stock which the length of the lines operated, owned, leased or controlled in this State bears to the total length of the lines owned, leased or controlled in this State and elsewhere shall be considered in fixing the value of the corporate franchise of such corporation liable for taxation in this State; and such corporate franchise shall be liable to taxation in each county, incorporated city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district through or into which such lines pass, or are operated, in the same proportion that the length of the line in such county, city, town or district bears to the whole length of lines in the State, less the value of any tangible property assessed, or liable to assessment in any such county, city, town or taxing district.

§ 4083. It shall be the duty of the auditor, immediately after fixing such values by said board, to notify the corporation of the

fact; and all such corporations shall have thirty days from the time of receiving the notice to go before such board and ask a change of the valuation, and may introduce evidence, and the chairman of the board is hereby authorized to summon and swear witnesses, and after hearing such evidence the board may change the valuation as it may deem proper, and the action of the board shall be final.

§ 4084. The auditor shall, at the expiration of thirty days after the final determination of such values, certify to the county clerk of the counties, when any portion of the corporate franchise of any such corporation, company or association shall be liable to local taxation as herein provided, the amount thereof liable for county, city, town or district tax; and such certificate shall be by each county clerk filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

§ 4087. Any corporation, or officer thereof, willfully failing or refusing to make reports as required by this chapter, shall be deemed guilty of a misdemeanor, and for each offense shall be fined one thousand dollars, and fifty dollars for each day the same is not made after October first of each year.

§ 4089. Should any corporation required to make the report as hereinbefore provided be in the hands of, or under the control of a receiver or other person, it shall be the duty of such receiver or other person to make the returns and valuations as hereinbefore required.

§ 4090. Should any corporation fail to make the reports as required herein on or before the first day of October of each year, the said board shall proceed to ascertain the facts and values as required by this article, in such manner and by such means as it deems proper, at the cost of the company failing to make the report, and shall fix the values of the corporate franchise liable for taxation as aforesaid, and the corporation shall be taxed accordingly.

§ 4091. All taxes assessed against any corporation, company or association under this article, except banks and trust companies, shall be due and payable thirty days after notice of same has been given to said corporation, company or association by the auditor; and every such corporation, company or association failing to pay its taxes, after receiving thirty days' notice, shall be deemed delinquent, and a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum; any such corporation, company or as-

sociation failing to pay its taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined fifty dollars for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin Circuit Court shall have jurisdiction.

REVENUE AND TAXATION.

CHAPTER 103.

ARTICLE IV.

Assesement of and Payment of Taxes by Railroads.

§ 4096. That the president or chief officer of each railroad company, or other corporation owning or operating a railroad lying in whole or in part in this State, shall, on or before the first of September in each year, return to the Auditor of Public Accounts of the State, under oath, the total length of such railroad, including the length thereof beyond the limits of the State, and designating its length within this State, and in each county, city, incorporated town and taxing district therein, together with the average value per mile thereof, and in respective counties, cities, incorporated towns and taxing districts therein, together with the average value per mile thereof, for the purposes of being operated as a carrier of freight and passengers including engines and cars, and a list of the depot grounds and improvements, and other real estate of the said company and the value thereof, and the respective counties, cities and incorporated towns in which the same are located. That if any of said railroad companies owns or operates a railroad or railroads out of this State, the president or chief officer of such company shall only be required to return such proportion of the entire value of all its rolling stock as the number of miles of its railroad in this State bears to the whole number of miles operated bysai d company in and out of this State. Said report shall be made as of the first day of July, and a failure to file said report by the first day of September shall subject the president or chief officer residing in this

State to a fine of one thousand dollars, and fifty dollars for every day after the first day of September that he fails to file said report, to be recovered as indicated by section nine of this article.

§ 4097. Should any railroad, or part of a line of railroad, in this State be in the hands or under the control of a receiver or other person, by order or decree of any court in this or any other State, it shall be the duty of such receiver or other person to make, under his oath, the returns and valuations required by the first section of this article; and should the president or chief officer of any railroad company, or such receiver, fail to make said returns and valuations on or before the first day of September in each year, the said auditor shall proceed and ascertain the facts and values required by this article to be returned, and in such manner and by such means as he may deem best, and at the cost of the company failing to make the returns and values.

§ 4098. The auditor shall lay before the Railroad Commission, on or before the first day of October, the returns made to him under this act, and any schedules and valuations he may have made under the second section of this article. And should the valuations, or any of them in the judgment of said board, be either too high or too low, they shall correct and equalize the same by a proper increase or decrease thereof. Said board shall keep a record of their proceedings, to be signed by each member present at any meeting; and thes aid board is hereby authorized to examine the books and property of any railroad company to ascertain the value of its property, or to have them examined by any suitable disinterested person, to be appointed by them for that purpose.

§ 4099. It shall be the duty of the county superintendent of common schools in each county in which a railroad is operated to furnish, on or before the first day of July of each year, to such railroad company or companies, the boundary of each graded or common school district through or into which any part of such railroad or other railroad property is situated; and the county clerk of any county containing any other taxing district through or into which any railroad is located shall make a similar report to such railroad company. Any county superintendent or county clerk failing to make the report, as herein required, or shall make a false report, shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty nor more than one hundred dollars for each offense.

§ 4100. All taxes against any railroad company, which shall be levied in any common school district, shall be paid to the superintendent of common schools of the county for the benefit of the district entitled thereto.

§ 4101. The provisions of this law shall not be construed to apply to any colored school district: Provided, That the same rate of taxation assessed against the real estate of any railroad company or corporation in any graded common school district or common school district, in any year, shall be assessed against all of the taxable property in such district; and the railroad tax, when collected, shall be paid over to the county superintendent of the county in which the district schoolhouse wherein the tax assessed shall be situated, and shall constitute and be held by the county superintendent as a graded or common district school fund; and the said fund shall be apportioned and distributed by the county superintendent between the white graded common school or white common school district wherein said tax shall be collected and any colored common school district which shall be located over the same boundary. The distribution shall be in the ratio that the whole number of white children of pupil age and the whole number of colored children of pupil age residing in the district shall bear to the whole number of children, white and colored, residing in the district wherein such tax shall be collected.

§ 4102. The same rate of taxation for State purposes which is or may be in any year levied on other real estate, shall be, and is hereby, levied upon the value, so found by said board, of the railroad, rolling stock and real estate of each company; and the same rate of taxation for the purpose of each city, town, county, part of a county, or tax district of any kind, in which any portion of any railroad is located, which is, or may be, in any year, levied on other real estate therein, shall be, and is hereby, levied on the value of the real estate of said company therein, and of the number of miles of such road therein reckoned as of the value of the average of each mile of such railroad, with its rolling stock, as ascertained as aforesaid: Provided, That railroad bridges spanning any river, which constitutes the boundary or State line of the Commonwealth, shall be assessed as of the counties in which they are located, and local tax derived therefrom shall be applied to each city, town, county or tax district in which said bridges are or may be located; and immediately after the said board shall have completed its valuations each year, the Auditor of Public Accounts shall notify the clerk of

each county court of the amount so assessed for taxation in his county, and each railroad company of the amount of its assessment for taxation for the State purposes and for the purposes of such city, town, county, or part of county and tax district. And all existing laws in this State authorizing the assessment and taxation of the property of railroad companies by counties, cities or incorporated towns, are hereby repealed, and no county, city or incorporated town in this State shall hereafter assess, levy or collect any taxes on the property of railroad companies in this State except as provided by this article.

§ 4103. All taxes assessed against any railroad company shall be due and payable thirty days after notice by mail of the assessment is given by the Auditor, and every such company failing to pay its taxes after receiving such thirty days' notice of the amount of such tax shall be deemed delinquent, and a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per annum. Any railroad company failing to pay its taxes, penalty and interest, after becoming delinquents, shall be deemed guilty of a misdemeanor, and, on conviction shall be fined fifty dollars for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction.

§ 4104. Taxes, penalties and interest due the Commonwealth from any railroad company may be recovered by the Auditor of Public Accounts, by action in the name of the Commonwealth, in the Franklin Circuit Court; and those due any county, city, incorporated town or taxing district may be recovered by the officer authorized to receive the same, by action in the name of the Commonwealth in any court of competent jurisdiction.

CHAPTER 2, ACTS 1900.

AN ACT to prevent railroad companies or corporations owning or operating a line or lines of railroad, and its officers, agents and employes from charging, collecting or receiving extortionate freight or passenger rates in this Commonwealth, and to further increase and define the duties and powers of the Railroad Commission in reference thereto, and prescribing the manner of enforcing the provisions of this act and penalties for the violation of its provisions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. When complaint shall be made to the Railroad Commission accusing any railroad company or corporation of charging, collecting or receiving extortionate freight or passenger rates, over its line or lines of railroad in this Commonwealth, or when said Commission shall receive information, or have reason to believe that such rate or rates are being charged, collected or received, it shall be the duty of said commission to hear and determine the matter as speedily as possible. They shall give the company or corporation complained of not less than ten days' notice, by letter mailed to an officer or employe of said company or corporation, stating the time and place of the hearing of same; also the nature of the complaint or matter to be investigated, and shall hear such statements, arguments or evidence offered by the parties as the Commission may deem relevant, and should the Commission determine that the company or corporation is, or has been guilty of extortion, said Commission shall make and fix a just and reasonable rate, toll or compensation, which said railroad company or corporation may charge, collect or receive for like services thereafter rendered. The rate, toll or compensation so fixed by the Commission shall be entered and be an order on the record book of their office and signed by the Commission and a copy thereof mailed to an officer, agent or employe of the railroad company or corporation affected thereby, and shall be in full force and effect at the expiration of ten days thereafter, and may be revoked or modified by an order likewise entered of record. And should said railroad company or corporation or any officer, agent or employe thereof, charge, collect or receive a greater or higher rate, toll or compensation for like services thereafter rendered than that made and fixed by said Commission,

as herein provided, said company or corporation, and said officer, agent or employe shall each be deemed guilty of extortion, and upon conviction shall be fined for the first offense in any sum not less than five hundred dollars, nor more than one thousand dollars, and upon a second conviction, in any sum not less than one thousand dollars nor more than two thousand dollars, and for a third and succeeding convictions, in any sum not less than two thousand dollars nor more than five thousand dollars.

Sec. 2. The circuit court of any county into or through which the line or lines of road carrying such passenger or freight, owned or operated by said railroad, and the Franklin Circuit Court shall have jurisdiction of the offense against the railroad company or corporation offending, and the circuit court of the county where such offense may be committed by said officer, agent or employe shall have jurisdiction of the offense against the railroad company or coemploye.

Sec. 3. Prosecutions under this act shall be by indictment.

Sec. 4. All prosecutions under this act shall be commenced within two years after the offense shall have been committed.

Sec. 5. In making said investigation, said Commission may, when deemed necessary, take the depositions of witnesses before an examiner or notary public, whose fee shall be paid by the State, and upon the certificate of the chairman of the Commission, approved by the governor, the auditor shall draw his warrant upon the treasurer for its payment. Approved March 10, 1900.

Interurban Railroads.

Chapter 13, Acts 1902.

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§ 1. All interurban electric railroad companies authorized to construct a railroad ten or more miles in length, heretofore or hereafter incorporated under the general railroad laws of this Commonwealth, shall be under the same duties and responsibilities, so far as practicable, and shall have the same rights, powers and privileges as is now granted to or conferred upon railroad corporations existing, operated or incorporated under existing laws of this Commonwealth, or under laws that may hereafter be enacted.

§ 2. Interurban electric railroads shall not, unless by special contract with electric street railway companies, receive, transport and deliver passengers between points within the limits of cities or municipalities, which are contiguous or adjacent, and into and through which such electric street railways are being operated, while using the tracks of such electric street railways therein.

§ 3. All property or interurban electric railroads, both tangible and intangible, shall be valued and assessed for taxation in the same manner provided by law for the valuation and assessment of other railroad property in this Commonwealth.

§ 4. Any interurban electric railroad company now incorporated, or that may hereafter be incorporated, as prescribed in section one of this act is hereby authorized and empowered to contract with the owner of any land, material or water right, necessary for the construction and equipping and maintaining a reservoir within five miles of the line of railroad or a line of railroad proposed to be constructed or for a supply of water from a lake or river for the use and purpose of providing and maintaining a sufficient supply of water for its power-house or power-houses, and conveying, by a pipe line, the water thereto. When any company authorized to construct interurban electric railroads shall be unable to contract with the owner of any land or material or water rights, necessary

for the purpose of constructing, equipping, and maintaining a reservoir to provide a sufficient supply of water, and pipe the same to its power-house or power-houses, it shall have the right to condemn the same, in the same manner in which railroad companies condemn land for rights of way.

§ 5. Nothing in this act shall be construed as depriving companies heretofore organized and which may hereafter be organized and incorporated under the general railroad laws of this Commonwealth, governing such companies, and which companies, use or intend to use, electricity or other motive power, of the right of condemnation or other rights and privileges which they obtain or may obtain by reason of their incorporating under the general railroad laws of this Commonwealth.

§ 6. Any person who shall willfully and maliciously tear up, break or displace any rail or other fixture attached to the track or switch or break any bridge or viaduct, or disturb trolley wires or their support or poles and guy-poles and guy-wires or feed or supply-wires, power-house or machinery therein, car-barns, or cars therein, owned and used by any interurban electric railroad company, or do any act whereby the motor or cars might be upset, arrested or thrown from the tract of any such road, or of any switch or any branch or turn-out, or who shall willfully and maliciously destroy, or injure any dam, reservoir or bank thereof, or shall destroy, injure or obstruct any pipe, water-main or course connected with such reservoir, shall be confined in the penitentiary not less than two nor more than ten years.

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